रजिस्ट्री सं० डी एल (एन) 04/0007/2003—05

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भारत का राजपत्र
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सं. 16] नई दिल्ली, अप्रैल 11—अप्रैल 17, 2004, शनिवार/चैत्र 22—चैत्र 28, 1926
No. 16] NEW DELHI, APRIL 11—APRIL 17, 2004, SATURDAY/CHAITRA 22—CHAITRA 28, 1926

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

मंत्रिमंडल सचिवालय

नई दिल्ली, 5 अप्रैल, 2004

का. आ. 908.—केन्द्रीय सरकार एतद्द्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, कर्नाटक राज्य सरकार की अधिसूचना सं. एचडी 283 पीसीआर 2003 दिनांक 24-2-2004 द्वारा प्राप्त कर्नाटक राज्य सरकार की सहमति से (1) श्री मन्नू लाल अग्रवाल, प्रबंध निदेशक, मैसर्स ऐरन काम्प्ट्रैक्स टॉवर्स (प्राइवेट) लिमिटेड, दोथापल्ली गांव, आर.आर. डिस्ट्रिक्ट, आंध्र प्रदेश और मैसर्स ऐरन स्टील्स लिमिटेड, अमीरपेट, हैदराबाद (2) श्री रितेश अग्रवाल, प्रोमोटर, मैसर्स ऐरन काम्प्ट्रैक्स टॉवर्स (प्राइवेट) लिमिटेड और मैसर्स ऐरन, स्टील्स लिमिटेड (3) श्रीमती शशि अग्रवाल, प्रबंध निदेशक, मैसर्स शक्ति स्टील्स लिमिटेड, अमीरपेट, हैदराबाद (4) श्री अमित अग्रवाल, प्रोमोटर, मैसर्स ऐरन स्टील्स लिमिटेड (5) मैसर्स ऐरन काम्प्ट्रैक्स टॉवर्स (प्राइवेट) लिमिटेड, एस. नं. 29, दोथापल्ली गांव, आर.आर. डिस्ट्रिक्ट, आंध्र प्रदेश (6) मैसर्स ऐरन स्टील्स लिमिटेड, अमीरपेट, हैदराबाद (7) मैसर्स शक्ति स्टील्स लिमिटेड, अमीरपेट, हैदराबाद (8) श्री एम.एस. सुंदरेश्वरन, तत्कालीन शाखा प्रबंधक, ओरियंटल बैंक ऑफ कामर्स, अमीरपेट शाखा, हैदराबाद और (9) श्री कंवलजीत सिंह, तत्कालीन क्षेत्रीय प्रबंधक, ओरियंटल बैंक ऑफ कामर्स, क्षेत्रीय कार्यालय, हैदराबाद और किन्हीं अन्य लोक सेवकों अथवा व्यक्तियों के विरुद्ध भारतीय दंड संहिता, 1860 (1860 का अधिनियम सं. 45) की धारा 120-बी सपठित धारा 409, 420, 467, 468 और 471 तथा भ्रष्टाचार निवारण, अधिनियम, 1988 (1988 का अधिनियम सं. 49) की धारा 13 (2) सपठित धारा 13(1) (डी) के अधीन दर्ज अपराध मामला सं. आरसी. 2 (ई)2003-सीबीआई-बीएस एंड एफ सी, चेन्नई और उपर्युक्त अपराध में से एक अथवा अधिक से संबंधित अथवा संसक्त प्रयत्नों, दुष्प्रेरणों और षड्यंत्र तथा उसी संव्यवहार के अनुक्रम में किए गए अथवा उन्हीं तथ्यों से उद्भूत किसी अन्य अपराध और अपराधों के अन्वेषण के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और अधिकारिता का विस्तार सम्पूर्ण कर्नाटक राज्य पर करती है।

[सं. 228/21/2004-डी. एस. पी.ई.]

शुभा ठाकुर, अवर सचिव

CABINET SECRETARIAT

New Delhi, the 5th April, 2004

S.O. 908.—In exercise of the powers conferred by Sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Karnataka vide Notification No. HD 283 PCR 2003 dated 24-2-2004, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Karnataka for investigation of criminal case RC. 2(E)/2003-CBI-BS& FC, Chennai, registered against (1) Shri Mannulal Agarwal, Managing Director of M/s. Airen Comptrax Towers (Private) Limited, Dothapally Village, R.R. District, Andhra Pradesh and M/s. Airen Steels Limited, Ameerpet, Hyderabad (2) Shri Ritesh Agarwal, Promoter of M/s. Airen Comptrax Towers (Private) Limited and M/s. Airen Steels Limited (3) Smt. Sashi Agarwal, Managing Director of M/s. Shakthi Steels Limited, Ameerpet, Hyderabad (4) Shri Amit Agarwal, Promoter of M/s Airen Steels Limited (5) M/s. Airen Comptrax Towers (Private) Limited, Sy. No. 29, Dothapally Village, R.R. District, Andhra Pradesh (6) M/s. Airen Steels Limited. Ameerpet, Hyderabad (7) M/s. Shakthi Steels Limited Ameerpet, Hyderabad (8) Shri M.S. Sundraswaran, the then Branch Manager, Oriental Bank of Commerce, Ameerpet Branch, Hyderabad and (9) Shri Kanwaljeet Singh, the then Regional Manager, Oriental Bank of Commerce, Regional Office, Hyderabad and any other public servants or persons under section 120-B read with 409, 420, 467, 468 and 471 of the Indian Penal Code, 1860 (Act No. 45 of 1860) and section 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988 (Act No. 49 of 1988) and attempts, abetments and conspiracy in relation to or in connection with one or more of the offence mentioned above and any other offence and offences commited in the course of the same transaction or arising out of the same facts.

[No. 228/21/2004-DSPE]

SHUBHA THAKUR, Under Secy.

नई दिल्ली, 6 अप्रैल, 2004

का. आ. 909.—केन्द्रीय सरकार एतद्द्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 सपठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केरल सरकार के गृह (जे) विभाग की अधिसूचना सं. 34568/जे 2/2003/होम दिनांक 28 जून, 2003 द्वारा प्राप्त केरल सरकार की सहमति से हेमांबिका नगर पुलिस स्टेशन पलाक्काड के अपराध मामला सं. 186/2002 पुनः संख्यांकित अपराध मामला सं. 431/सीआर/पीकेडी/02-सीबी-सी आईडी में भारतीय दंड संहिता, 1860 (1860 का अधिनियम सं. 45) की धारा 454, 380 और 461 के अधीन दंडनीय अपराधों और उपर्युक्त अपराधों में से एक अथवा अधिक से संबंधित अथवा संसक्त प्रयत्नों, दुष्प्रेरणों और षडयंत्रों तथा उसी संव्यवहार के अनुक्रम के किए गए अथवा उन्हीं तथ्यों से उद्भूत अन्य अपराध के अन्वेषण के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और अधिकारिता का विस्तार सम्पूर्ण केरल राज्य पर करती है।

[सं० 228/61/2003-डी०एस०पी०ई०]

शुभा ठाकुर, अवर सचिव

New Delhi, the 6th April, 2004

S.O. 909.— In exercise of the powers conferred by Sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No.25 of 1946), the Central Government with the consent of the Government of Kerala Home (J) Department *vide* Notification No. 34568/J2/2003/Home dated 28th June, 2003, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole State of Kerala for investigation of the offences punishable under Sections 454, 380 and 461 of the Indian Penal Code, 1860 (Act No. 45 of 1860) in Crime No. 186/2002 of Hemambika Nagar Police Station, Palakkad renumbered as Crime No. 431/CR/PKD/02 of CB-CID, Palakkad and attempts, abetments and conspiracies in relation to or in connection with one or more the offences mentioned above and other offence committed in the course of the same transaction or arising out of the same facts.

[No. 228/61/2003-DSPE]

SHUBHA THAKUR, Under Secy.

नई दिल्ली, 6 अप्रैल, 2004

का. आ. 910.—केन्द्रीय सरकार एतद्द्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, कर्नाटक राज्य सरकार की अधिसूचना सं. एचडी 1 पीसीआर 2004 दिनांक 3-3-2004 द्वारा प्राप्त कर्नाटक राज्य सरकार की सहमति से श्री शंकर कुमार अग्रवाल, सामग्री प्रबंधक, सीसीएल, रांची और किसी अन्य लोक सेवक अथवा व्यक्ति के विरुद्ध मामला आरसी 10 (ए)/2002(आर) में भ्रष्टाचार निवारण अधिनियम, 1988 की धारा 13(2) सपठित धारा 13(1)(ई) के अधीन दंडनीय अपराधों और उक्त अपराधों से संबंधित अथवा संसक्त तथा उसी संव्यवहार के अनुक्रम में किए गए अथवा उन्हीं तथ्यों से उद्भूत किन्हीं अन्य अपराधों के अन्वेषण के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और अधिकारिता का विस्तार सम्पूर्ण कर्नाटक राज्य पर करती है।

[सं० 228/24/2004-डी०एस०पी०ई०]

शुभा ठाकुर, अवर सचिव

New Delhi, the 6th April, 2004

S.O. 910.— In exercise of the powers conferred by Sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of State Government of Karnataka *vide* Notification No. HD 1 PCR 2004 dated 3-3-2004, hereby extends the powers and jurisdiction of the members of the Delhi Special Police

Establishment to whole of the State of Karnataka for investigation of offences punishable under section 13(2) read with 13(1)(e) of Prevention of Corruption Act, 1988 (Act No. 49 of 1988) in RC. 10(A)/2002(R) against Shri Shanker Kumar Agarwal, Materials Manager, CCL, Ranchi and any other public servant or person in relation to, or in connection with the said offences, and any other offences committed in the course of the same transaction arising out of the same facts.

[No. 228/24/2004-DSPE]

SHUBHA THAKUR, Under Secy.

वित्त मंत्रालय

(राजस्व विभाग)

केन्द्रीय प्रत्यक्ष कर बोर्ड

नई दिल्ली, 23 मार्च, 2004

का. आ. 911.—सर्वसाधारण की जानकारी के लिए यह अधिसूचित किया जाता है कि केन्द्र सरकार आयकर नियमावली, 1962 के नियम 2ङ के साथ पठित आयकर अधिनियम, 1961 की धारा 10(23-छ) के प्रयोजनार्थ कर निर्धारण वर्ष 2002-2003 से नीचे पैरा (3) में उल्लिखित उद्यम/उपक्रम को अनुमोदित करती है :—

2. यह अनुमोदन इस शर्त के अधीन है कि :—

(i) उद्यम/उपक्रम आयकर नियमावली, 1962 के नियम 2ङ के साथ पठित आयकर अधिनियम, 1961 की धारा 10(23-छ) के उपबंधों के अनुरूप होगा और उनका अनुपालन करेगा;

(ii) केन्द्र सरकार यह अनुमोदन वापिस ले लेगी यदि उद्यम/उपक्रम :—

(क) अवसंरचनात्मक सुविधा को जारी रखना बंद कर देता है; अथवा

(ख) खाता बहियों का रख-रखाव नहीं करता है तथा आयकर नियमावली, 1962 के नियम 2ङ के उप नियम (7) द्वारा यथा अपेक्षित किसी लेखाकार द्वारा ऐसे खातों की लेखा परीक्षा नहीं कराता है; अथवा

(ग) आयकर नियमावली, 1962 के नियम 2ङ के उप नियम (7) द्वारा यथा अपेक्षित लेखा परीक्षा रिपोर्ट प्रस्तुत नहीं करता है।

3. अनुमोदित उद्यम/उपक्रम है :—

मैसर्स पी पी एन पावर जेनरेटिंग कम्पनी लिमिटेड, तृतीय तल, झावर प्लाजा, 1-ए, नंगमबक्कम् हाई कोर्ट, चेन्नै-600034, तमिलनाडु में पिल्लई-पेरुमैनलूर में अपनी 330.5 मेगावाट संयुक्त साईकिल गैस टर्बाइन पावर परियोजना के लिए। (फा. सं. 205/98/1999-आयकर नि.-II खण्ड-I)

[अधिसूचना सं. 115/2004/फा.सं. 205/98/1999-आयकर नि.-II (खण्ड-I)]

संगीता गुप्ता, निदेशक (आयकर नि.-II)

MINISTRY OF FINANCE

(Department of Revenue)

CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 23rd March, 2004

S. O. 911.—It is notified for general information that the enterprise/undertaking, listed at para (3) below has been approved by the Central Government for the purpose of Section 10(23G) of the Income-tax Act, 1961, read with rule 2E of the Income-tax Rules, 1962 with effect from the Asstt. Year 2002-2003.

2. The approval is subject to the conditions that—

(i) the enterprise/undertaking will conform to and comply with the provisions of Section 10(23G) of the Income-tax Act, 1961, read with rule 2E of the Income-tax Rules, 1962;

(ii) the Central Government shall withdraw this approval if the enterprise/undertaking :—

(a) ceases to carry on the eligible business as defined in Explanation (b) to Rule 2E of I.T. Rules, 1962; or

(b) fails to maintain books of account and get such accounts audited by an accountant as required by sub-rule (6) of rule 2E of the Income-tax Rules, 1962; or

(c) fails to furnish the audit report as required by sub-rule (6) of rule 2E of the Income-tax Rules, 1962.

3. The enterprise/undertaking approved is—

M/s PPN Power Generating Company Limited, III Floor, Jhaver Plaza, I-A, Nungambakkam High Road, Chennai-600034 for their 330.5 MW Combined Cycle Gas Turbine Power Project at Pillaiperumalnallur in Tamil Nadu. (F. No. 205/98/1999-ITA-II) (Vol. 1)

[Notification No. 115/2004/F.No. 205/98/1999-ITA-II (Vol. 1)]

SANGEETA GUPTA, Director (ITA.II)

केन्द्रीय उत्पाद शुल्क आयुक्त का कार्यालय

मदुरै, 24 मार्च, 2004

सं. 1/2004-सीमा शुल्क (एन टी)

का.आ. 912.—सीमा शुल्क अधिनियम, 1962 (1962 का 52) धारा 9 जो भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, नई दिल्ली के अधिसूचना सं. 33/94-सीमा शुल्क (एन टी) दिनांक 1-7-1994 के साथ पठित, द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मैं एतद्द्वारा तमिलनाडु राज्य के, मदुरै जिला, मेलूर तालुका के तेर्कुतेरु और नरसिंहपट्टी गाँव को सीमा शुल्क अधिनियम, 1962 (1962 का 52) के अधीन शत प्रतिशत निर्यातोन्मुख उपक्रम स्थापित करने हेतु भांडागार घोषित करता हूँ।

[फाइल सी.सं. IV/16/23/2004-तकनीकी]

एम. सुरेश, आयुक्त

OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE

Madurai, the 24th March, 2004

No. 01/2004-CUSTOMS (NT)

S.O. 912.—In exercise of the powers conferred on me under Section 9 of Customs Act. 1962 (52 of 1962) read with Notification No. 33/94 Customs (NT) dated 1-7-94 of the Government of India, Ministry of Finance, Department of Revenue, New Delhi, I hereby declare "THERKUTHERU AND NARASINGAMPATTI VILLAGE, MELUR TALUK, MADURAI DISTRICT" in the State of Tamilnadu to be a warehousing station under the Customs Act, 1962 (52 of 1962) for the purpose of setting up of 100% Export Oriented Undertakings.

[F. C. No. IV/16/23/2004-Tech.]

M. SURESH, Commissioner

केन्द्रीय उत्पाद शुल्क पुणे III के आयुक्त का कार्यालय

पुणे, 26 मार्च, 2004

संख्या : 6/2003 केन्द्रीय उत्पाद शुल्क (नॉन टैरिफ)

का.आ. 913.—भारत सरकार, वित्त तथा कंपनी कार्य मंत्रालय, राजस्व विभाग, नई दिल्ली द्वारा दिनांक 1-7-1994 को जारी की गई अधिसूचना संख्या 33/94-सीमा शुल्क (नॉन टैरिफ) के अधीन मुझे प्रदत्त अधिकारों को कार्यान्वित करते हुए, मैं, ए. एस. आर. नायर, आयुक्त, केन्द्रीय उत्पाद शुल्क पुणे III आयुक्तालय, पुणे एतद्द्वारा महाराष्ट्र राज्य के गाँव-कासार आंबोली, तालुक-मुलसी, जिला पुणे-411042 को सीमा शुल्क अधिनियम, 1962 (1962 का 52) की धारा 9 के अधीन तथा 100% निर्यातलक्ष्यी यूनिट स्थापना हेतु, वेअरहाउसिंग स्टेशन के रूप में घोषित कर रहा हूँ।

[फा. सं. वी जी एन (30)/404/टी ए/4]

ए० एस० आर० नायर, आयुक्त

OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE, PUNE-III

Pune, the 26th March, 2004

No. 6/2003-C.E. (NT)

S.O. 913.—In exercise of the powers conferred on me by the Notification No. 33/94-Cus (N.T.), dated 1-7-1994, of the Government of India, Ministry of Finance and Company Affairs, Department of Revenue, I, A.S.R. Nair, the Commissioner of Central Excise Pune-III Commissionerate, Pune, hereby declare Village : Kasar Amboli, Taluka : Mulshi, Dist. Pune-411042, in the state of Maharashtra to be warehousing station under Section-9 of the Customs Act, 1962 (52 of 1962), for setting up 100% E.O.U.'s.

[F. No. VGN(30)/404/TA/04]

A.S.R. NAIR, Commissioner

नई दिल्ली, 26 मार्च, 2004

(आयकर)

का. आ. 914.—सामान्य जानकारी के लिए यह अधिसूचित किया जाता है कि केन्द्र सरकार द्वारा अधोलिखित संगठन को उसके नाम के सामने उल्लिखित अवधि के लिए आयकर नियमावली, 1962 के नियम 6 के साथ पठित आयकर अधिनियम, 1961 की धारा 35 की उपधारा (I) के खंड (ii) के प्रयोजनार्थ "**संस्था**" श्रेणी के अन्तर्गत निम्नलिखित शर्तों के अधीन अनुमोदित किया गया है :—

(i) अधिसूचित **संगठन** अपने अनुसंधान कार्यकलापों के लिए अलग लेखा बहियों का रख-रखाव करेगी;

(ii) अधिसूचित **संगठन** प्रत्येक वित्तीय वर्ष के लिए अपनी वैज्ञानिक अनुसंधान गतिविधियों की वार्षिक रिटर्न प्रत्येक 31 मई को अथवा उससे पहले सचिव, वैज्ञानिक और औद्योगिक अनुसंधान विभाग 'टेक्नोलॉजी भवन' न्यू महरोली रोड, नई दिल्ली-110016 को प्रस्तुत करेगी;

(iii) अधिसूचित **संगठन** केन्द्र सरकार की तरफ से नामोद्दिष्ट निर्धारण अधिकारी को आयकर की विवरणी प्रस्तुत करने के अतिरिक्त अपने लेखा परीक्षित वार्षिक लेखों की एक प्रति तथा अपने अनुसंधान कार्यकलापों, जिसके लिए आयकर अधिनियम, 1961 की धारा 35 की उपधारा (1) के अन्तर्गत छूट प्रदान की गई थी, के संबंध में आय एवं व्यय खाते की लेखा परीक्षा की भी एक प्रति संगठन पर अधिकार क्षेत्र वाले (क) आयकर महानिदेशक (छूट) 10 मिडिलटन रो, पांचवां तल, कलकत्ता-700071, (ख) सचिव, वैज्ञानिक एवं औद्योगिक अनुसंधान विभाग तथा (ग) आयकर आयुक्त/आयकर निदेशक (छूट) को प्रत्येक वर्ष 31 अक्तूबर को अथवा उससे पहले प्रस्तुत करेगी।

क्रम सं.	अनुमोदित संगठन का नाम	अवधि जिसके लिए अधिसूचना प्रभावी है
1.	मैसर्स इन्स्टीट्यूट आफ किडनी डिजीज एण्ड रिसर्च सेन्टर, बी. जे. मेडिकल कालेज एण्ड सिविल अस्पताल कैम्पस, अहमदाबाद-380016	1-4-2001 से 31-3-2004

टिप्पणी :— (i) उपर्युक्त शर्त (i) "**संघ**" के रूप में श्रेणीबद्ध संगठन पर लागू नहीं होगी।

(ii) अधिसूचित संगठन को सलाह दी जाती है कि वह अनुमोदन के नवीकरण के लिए तीन प्रतियों में और पहले ही अधिकार क्षेत्र वाले आयकर आयुक्त/आयकर निदेशक (छूट) के माध्यम से केन्द्र सरकार को आवेदन करें। अनुमोदन के नवीकरण के लिए आवेदन पत्र की तीन प्रतियां सचिव, वैज्ञानिक और औद्योगिक अनुसंधान विभाग को सीधे भेजी जाएं।

[अधिसूचना सं. 120/2004/फा.सं. 203/74/2002-आयकर नि.-II]

संगीता गुप्ता, निदेशक (आयकर नि.-II)

New Delhi, the 26th March, 2004

(INCOME TAX)

S. O. 914.—It is hereby notified for general information that the organisation mentioned below has been approved by the Central Government for the period mentioned below, for the purpose of clause (ii) of Sub-section (1) of Section 35 of the Income tax Act, 1961, read with Rule 6 of the Income-tax Rules, 1962 under the category "Institution" subject to the following conditions :—

(i) The organization shall maintain separate books of accounts for its research activities;

(ii) The notified organization shall furnish the Annual Return of its scientific research activities to the Secretary, Department of Scientific & Industrial Research, 'Technology Bhawan', New Mehrauli Road, New Delhi-110016 for every financial year on or before 31st May of each year ;

(iii) The notified organization shall submit, on behalf of the Central Government, to (a) the Director General of Income-tax (Exemptions), 10 Middleton Row, 5th Floor, Calcutta-700071, (b) the Secretary, Department of Scientific & Industrial Research, and (c) the Commissioner of Income-tax/Director of Income-tax (Exemptions) having jurisdiction over the organisation, on or before the 31st October each year, a copy of its audited Annual Accounts and also a copy of audited Income & Expenditure account in respect of its research activities for which exemption was granted under Sub-Section (1) of Section 35 of Income tax Act, 1961 in addition to the return of Income tax to the designated Assessing Officer.

S.No.	Name of the organisation approved	Period for which notification is effective
1.	M/s. Institute of Kidney Diseases and Research Centre, B. J. Medical College & Civil Hospital Campus, Ahmedabad-380016	1-4-2001 to 31-3-2004

Notes:—(i) Condition (i) above will not apply to the organization categorized as "Association".

(ii) The notified organization is advised to apply in triplicates as well in advance for futher renewal of the approval, to the Central Government through the Commissioner of Income-tax/Director of Income-tax (Exemptions) having jurisdiction. Three copies of the application for renewal of approval should also be sent directly to the Secretary, Department of Scientific and Industrial Research.

[Notification No. 120/2004/F.No. 203/74/2002-ITA.II]

SANGEETA GUPTA, Director (ITA.II)

नई दिल्ली, 26 मार्च, 2004

(आयकर)

का. आ. 915.—सामान्य जानकारी के लिए यह अधिसूचित किया जाता है कि केन्द्र सरकार द्वारा अधोलिखित संगठन को उसके नाम के सामने उल्लिखित अवधि के लिए आयकर नियमावली, 1962 के नियम 6 के साथ पठित आयकर अधिनियम, 1961 की धारा 35 की उपधारा (1) के खंड (ii) के प्रयोजनार्थ "**संघ**" श्रेणी के अन्तर्गत निम्नलिखित शर्तों के अधीन अनुमोदित किया गया है :—

(i) अधिसूचित **संगठन** अपने अनुसंधान कार्यकलापों के लिए अलग लेखा बहियों का रख-रखाव करेगी;

(ii) अधिसूचित **संगठन** प्रत्येक वित्तीय वर्ष के लिए अपनी वैज्ञानिक अनुसंधान गति-विधियों की वार्षिक रिटर्न प्रत्येक 31 मई को अथवा उससे पहले सचिव, वैज्ञानिक और औद्योगिक अनुसंधान विभाग 'टेक्नोलॉजी भवन' न्यू महरोली रोड, नई दिल्ली-110016 को प्रस्तुत करेगी;

(iii) अधिसूचित **संगठन** केन्द्र सरकार की तरफ से नामोद्दिष्ट निर्धारण अधिकारी को आयकर की विवरणी प्रस्तुत करने के अतिरिक्त अपने लेखा परीक्षित वार्षिक लेखों की एक प्रति तथा अपने अनुसंधान कार्यकलापों, जिसके लिए आयकर अधिनियम, 1961 की धारा 35 की उपधारा (1) के अन्तर्गत छूट प्रदान की गई थी, के संबंध में आय एवं व्यय खाते की लेखा परीक्षा की भी एक प्रति संगठन पर अधिकार क्षेत्र वाले (क) आयकर महानिदेशक (छूट) 10 मिडिलटन रो, पांचवां तल, कलकत्ता-700071, (ख) सचिव, वैज्ञानिक एवं औद्योगिक अनुसंधान विभाग तथा (ग) आयकर आयुक्त/आयकर निदेशक (छूट) को प्रत्येक वर्ष 31 अक्तूबर को अथवा उससे पहले प्रस्तुत करेगी।

क्रम सं.	अनुमोदित संगठन का नाम	अवधि जिसके लिए अधिसूचना प्रभावी है
1.	मैसर्स ऐसपी एग्रीकल्चरल रिसर्च एण्ड डवलपमैंट फाउंडेशन, ऐसपी हाउस, पी. ओ. बोक्स सं. 7602, बी. जे. पटेल रोड, एस. एन. डी. टी. के सामने महिला कालेज लिबर्टी गार्डन के समीप मलाड (वेस्ट) मुम्बई-400064	1-4-2002 से 31-3-2005

टिप्पणी :— (i) उपर्युक्त शर्त (i) "**संघ**" के रूप में श्रेणीबद्ध संगठन पर लागू नहीं होगी।

(ii) अधिसूचित संगठन को सलाह दी जाती है कि वह अनुमोदन के नवीकरण के लिए तीन प्रतियों में और पहले ही अधिकार क्षेत्र वाले आयकर आयुक्त/आयकर निदेशक (छूट) के माध्यम से केन्द्र सरकार को आवेदन करें। अनुमोदन के नवीकरण के लिए

आवेदन पत्र की तीन प्रतियां सचिव, वैज्ञानिक और औद्योगिक अनुसंधान विभाग को सीधे भेजी जाएंगी।

[अधिसूचना सं० 122/2004/फा०सं० 203/69/2003-आयकर नि०-II]

संगीता गुप्ता, निदेशक (आयकर नि०-II)

New Delhi, the 26th, March, 2004

(INCOME TAX)

S. O. 915.—It is hereby notified for general information that the organisation mentioned below has been approved by the Central Government for the period mentioned below, for the purpose of clause (ii) of Sub-section (1) of Section 35 of the Income-tax Act, 1961, read with Rule 6 of the Income-tax Rules, 1962 under the category "Association" subject to the following conditions :—

(i) The notified organization shall maintain separate books of accounts for its research activities;

(ii) The notified organization shall furnish the Annual Return of its scientific research activities to the Secretary, Department of Scientific & Industrial Research, 'Technology Bhawan', New Mehrauli Road, New Delhi-110016 for every financial year on or before 31st May of each year;

(iii) The notified organization shall submit, on behalf of the Central Government, to (a) the Director General of Income-tax (Exemptions), 10 Middleton Row, 5th Floor, Calcutta-700071, (b) the Secretary, Department of Scientific & Industrial Research, and (c) the Commissioner of Income-tax/Director of Income-tax (Exemptions) having jurisdiction over the organisation, on or before the 31st October each year, a copy of its audited Annual Accounts and also a copy of audited Income & Expenditure account in respect of its research activities for which exemption was granted under Sub-section (1) of Section 35 of Income-tax Act, 1961 in addition to the return of Income-tax to the designated Assessing Officer.

S.No.	Name of the organisation approved	Period for which notification is effective
1.	M/s. Aspee Agricultural Research & Development Foundation, Aspee House, P.O. Box No. 7602, B.J. Patel Road, Opp. S. N. D. T. Mahila College, Near Liberty Garden, Malad (West), Mumbai-400064	1-4-2002 to 31-3-2005

Notes:— (i) Condition (i) above will not apply to the organization categorized as "Association".

(ii) The notified organization is advised to apply in triplicates as well in advance for futher renewal of the approval, to the Central Government through the Commissioner of Income tax/Director of Income tax (Exemptions) having jurisdiction. Three copies of the application for renewal of approval should also be sent directly to the Secretary, Department of Scientific and Industrial Research.

[Notification No. 122/2004/F.No. 203/69/2003-ITA.II]

SANGEETA GUPTA, Director (ITA.II)

नई दिल्ली, 26 मार्च, 2004

(आयकर)

का. आ. 916.—सामान्य जानकारी के लिए यह अधिसूचित किया जाता है कि केन्द्र सरकार द्वारा अधोलिखित संगठन को उसके नाम के सामने उल्लिखित अवधि के लिए आयकर नियमावली, 1962 के नियम 6 के साथ पठित आयकर अधिनियम, 1961 की धारा 35 की उपधारा (1) के खंड (ii) के प्रयोजनार्थ "संस्था" श्रेणी के अन्तर्गत निम्नलिखित शर्तों के अधीन अनुमोदित किया गया है :—

(i) अधिसूचित संगठन अपने अनुसंधान कार्यकलापों के लिए अलग लेखा बहियों का रख-रखाव करेगी;

(ii) अधिसूचित संस्था प्रत्येक वित्तीय वर्ष के लिए अपनी वैज्ञानिक अनुसंधान गति-विधियों की वार्षिक रिटर्न प्रत्येक 31 मई को अथवा उससे पहले सचिव, वैज्ञानिक और औद्योगिक अनुसंधान विभाग 'टेक्नोलॉजी भवन' न्यू महरोली रोड, नई दिल्ली-110016 को प्रस्तुत करेगी;

(iii) अधिसूचित संस्था केन्द्र सरकार की तरफ से नामोद्दिष्ट निर्धारण अधिकारी को आयकर की विवरणी प्रस्तुत करने के अतिरिक्त अपने लेखा परीक्षित वार्षिक लेखों की एक प्रति तथा अपने अनुसंधान कार्यकलापों, जिसके लिए आयकर अधिनियम, 1961 की धारा 35 की उपधारा (1) के अन्तर्गत छूट प्रदान की गई थी, के संबंध में आय एवं व्यय खाते की लेखा परीक्षा की भी एक प्रति संगठन पर अधिकार क्षेत्र वाले (क) आयकर महानिदेशक (छूट) 10 मिडिलटन रो, पांचवां तल, कलकत्ता-700071, (ख) सचिव, वैज्ञानिक एवं औद्योगिक अनुसंधान विभाग तथा (ग) आयकर आयुक्त/आयकर निदेशक (छूट) को प्रत्येक वर्ष 31 अक्तूबर को अथवा उससे पहले प्रस्तुत करेगी।

क्रम सं.	अनुमोदित संगठन का नाम	अवधि जिसके लिए अधिसूचना प्रभावी है
1.	ट्यबरकुलोसिस रिसर्च सेन्टर, मार्फत के. जे. मेहता टी. बी. अस्पताल, अमरगढ़-364210, जिला-भावनगर, गुजरात राज्य	1-4-2002 से 31-3-2005

टिप्पणी :— (i) उपर्युक्त शर्त (i) "संस्था" के रूप में श्रेणीबद्ध संगठन पर लागू नहीं होगी।

(ii) अधिसूचित संस्था को सलाह दी जाती है कि वह अनुमोदन के नवीकरण के लिए तीन प्रतियों में और पहले ही अधिकार क्षेत्र वाले आयकर आयुक्त/आयकर निदेशक (छूट) के माध्यम से केन्द्र सरकार को आवेदन करें। अनुमोदन के नवीकरण के लिए आवेदन पत्र की तीन प्रतियां सचिव, वैज्ञानिक और औद्योगिक अनुसंधान विभाग को सीधे भेजी जाएंगी।

[अधिसूचना सं० 123/2004/फा०सं० 203/114/2003-आयकर नि०-II]

संगीता गुप्ता, निदेशक (आयकर नि०-II)

New Delhi, the 26th, March, 2004

(INCOME TAX)

S. O. 916.—It is hereby notified for general information that the organisation mentioned below has been approved by the Central Government for the period mentioned below, for the purpose of clause (ii) of Sub-section (1) of Section 35 of the Income tax Act, 1961, read with Rule 6 of the Income tax Rules, 1962 under the category "Institution" subject to the following conditions :—

(i) The organization shall maintain separate books of accounts for its research activities;

(ii) The notified Institution shall furnish the Annual Return of its scientific research activities to the Secretary, Department of Scientific & Industrial Research, 'Technology Bhawan', New Mehrauli Road, New Delhi-110016 for every financial year on or before 31st May of each year;

(iii) The notified Institution shall submit, on behalf of the Central Government, to (a) the Director General of Income tax (Exemptions), 10 Middleton Row, 5th Floor, Calcutta-700071, (b) the Secretary, Department of Scientific & Industrial Research, and (c) the Commissioner of Income tax/Director of Income tax (Exemptions) having jurisdiction over the organisation, on or before the 31st October each year, a copy of its audited Annual Accounts and also a copy of audited Income & Expenditure account in respect of its research activities for which exemption was granted under Sub-section (1) of Section 35 of Income tax Act, 1961 in addition to the return of Income tax to the designated assessing officer.

S.No.	Name of the organisation approved	Period for which notification is effective
1.	Tuberculosis Research Centre, C/o K.J. Mehta T.B. Hospital, Amargadh-364210, Distt. Bhavnagar, Gujarat State	1-4-2002 to 31-3-2005

Notes:— (i) Condition (i) above will not apply to the organization categorized as "Institution".

(ii) The notified Institution is advised to apply in triplicates as well in advance for futher renewal of the approval, to the Central Government through the Commissioner of Income tax/ Director of Income tax (Exemptions) having jurisdiction. Three copies of the application for renewal of approval should also be sent directly to the Secretary, Department of Scientific and Industrial Research.

[Notification No. 123/2004/F.No. 203/114/2003-ITA.II]

SANGEETA GUPTA, Director (ITA.II)

नई दिल्ली, 26 मार्च, 2004

(आयकर)

का० आ० 917.—सामान्य जानकारी के लिए यह अधिसूचित किया जाता है कि केन्द्र सरकार द्वारा अधोलिखित संगठन को उसके नाम के सामने उल्लिखित अवधि के लिए आयकर नियमावली, 1962 के नियम 6 के साथ पठित आयकर अधिनियम, 1961 की धारा 35 की उपधारा (1) के खंड (iii) के प्रयोजनार्थ "संघ" श्रेणी के अन्तर्गत निम्नलिखित शर्तों के अधीन अनुमोदित किया गया है :—

(i) अधिसूचित संगठन ने अपने अनुसंधान कार्यकलापों के लिए अलग लेखा बहियों का रख-रखाव करेगी;

(ii) अधिसूचित संघ प्रत्येक वित्तीय वर्ष के लिए अपनी वैज्ञानिक अनुसंधान गति-विधियों की वार्षिक रिटर्न प्रत्येक 31 मई को अथवा उससे पहले सचिव, वैज्ञानिक और औद्योगिक अनुसंधान विभाग 'टेक्नोलॉजी भवन' न्यू महरोली रोड, नई दिल्ली-110016 को प्रस्तुत करेगी;

(iii) अधिसूचित संघ केन्द्र सरकार की तरफ से नामोद्दिष्ट निर्धारण अधिकारी को आयकर की विवरणी प्रस्तुत करने के अतिरिक्त अपने लेखा परीक्षित वार्षिक लेखों की एक प्रति तथा अपने अनुसंधान कार्यकलापों, जिसके लिए आयकर अधिनियम, 1961 की धारा 35 की उपधारा (1) के अन्तर्गत छूट प्रदान की गई थी, के संबंध में आय एवं व्यय खाते की लेखा परीक्षा की भी एक प्रति संगठन पर अधिकार क्षेत्र वाले (क) आयकर महानिदेशक (छूट) 10 मिडिलटन रो, पांचवां तल, कलकत्ता-700071, (ख) सचिव, वैज्ञानिक एवं औद्योगिक अनुसंधान विभाग तथा (ग) आयकर आयुक्त/आयकर निदेशक (छूट) को प्रत्येक वर्ष 31 अक्तूबर को अथवा उससे पहले प्रस्तुत करेगी।

क्रम सं०	अनुमोदित संगठन का नाम	अवधि जिसके लिए अधिसूचना प्रभावी है
1.	बायो-टैक्नोलोजी एण्ड इको डेवलेपमेंट रिसर्च फाउडेशन सं० 67, 5 ए क्रॉस, आई० ए० एस० कालोनी, 16 वां मैन बी० टी० एम० द्वितीय स्टेज, बंगलौर-560076	1-4-1999 से 31-3-2002

टिप्पणी :— (i) उपर्युक्त शर्त (i) "संघ" के रूप में श्रेणीबद्ध संगठन पर लागू नहीं होगी।

(ii) अधिसूचित "संघ" को सलाह दी जाती है कि वह अनुमोदन के नवीकरण के लिए तीन प्रतियों में और पहले ही अधिकार क्षेत्र वाले आयकर आयुक्त/आयकर निदेशक (छूट) के माध्यम से केन्द्र सरकार को आवेदन करें। अनुमोदन के नवीकरण के लिए आवेदन पत्र की तीन प्रतियां सचिव, वैज्ञानिक और औद्योगिक अनुसंधान विभाग को सीधे भेजी जाएंगी।

[अधिसूचना सं० 121/2004/फा०सं० 203/102/2002-आयकर नि०-II]

संगीता गुप्ता, निदेशक (आयकर नि०-II)

New Delhi, the 26th, March, 2004

(INCOME TAX)

S. O. 917.—It is hereby notified for general information that the organisation mentioned below has been approved by the Central Government for the period mentioned below, for the purpose of clause (ii) of Sub-section (1) of Section 35 of the Income tax Act, 1961 read with Rule 6 of the Income tax Rules, 1962 under the category "Association" subject to the following conditions :—

(i) The organization shall maintain separate books of accounts for its research activities;

(ii) The notified Association shall furnish the Annual Return of its scientific research activities to the Secretary, Department of Scientific & Industrial Research, 'Technology Bhawan', New Mehrauli Road, New Delhi-110016 for every financial year on or before 31st May of each year;

(iii) The notified Association shall submit, on behalf of the Central Government, to (a) the Director General of Income tax (Exemptions), 10 Middleton Row, 5th Floor, Calcutta-700071, (b) the Secretary, Department of Scientific & Industrial Research, and (c) the Commissioner of Income tax/Director of Income tax (Exemptions) having jurisdiction over the organisation, on or before the 31st October each year, a copy of its audited Annual Accounts and also a copy of audited Income & Expenditure account in respect of its research activities for which exemption was granted under Sub-section (1) of Section 35 of Income tax act, 1961 in addition to the return of Income tax to the designated assessing officer.

S.No.	Name of the organisation approved	Period for which notification is effective
1.	Bio-Technology and Eco Development Research Foundation, No. 67, 5A Cross, IAS Colony, 16th Main BTM 2nd Stage, Bangalore-560 076	1-4-1999 to 31-3-2002

Notes:—(i) Condition (i) above will not apply to the organization categorized as "Association".

(ii) The notified Association is advised to apply in triplicates as well in advance for futher renewal of the approval, to the Central Government through the Commissioner of Income tax/Director of Income tax (Exemptions) having jurisdiction. Three copies of the application for renewal of approval should also be sent directly to the Secretary, Department of Scientific and Industrial Research.

[Notification No. 121/2004/F.No. 203/102/2002-ITA.II]

SANGEETA GUPTA, Director (ITA.II)

कार्यालय आयुक्त, केन्द्रीय उत्पाद शुल्क

चण्डीगढ़, 31 मार्च, 2004

संख्या 01/सीमा शुल्क/2004/एन.टी.

का०आ० 918.—भारत सकरार, वित्त मंत्रालय, राजस्व विभाग, नई दिल्ली की आधिसूचना 33/94-सीमा शुल्क (एन टी) दिनांक 1-3-94 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मैं एतद्द्वारा गाँव-जाललपुर, तहसील-राजपुरा, जिला-पटियाला (पंजाब) को (100 प्रतिशत इ०ओ०यू) स्थापित करने के उद्देश्य से सीमा शुल्क अधिनियम 1962 (1962का 52) की धारा 9 के अंतर्गत भाण्डागार स्टेशन घोषित करती है।

[फा० सं० VIII(48)CUS/EOU/KBCIL/42/03]

एफ० एम० जसवाल, आयुक्त

OFFICE OF THE COMMISSIONER, CENTRAL EXCISE

Chandigarh, the 31st March, 2004

No. 01/CUS/2004 (NT)

S. O. 918.— In exerices of the powers conferred by notification No. 33/94-Cus (NT) dated 17/94 of the Govt. of India, Ministry of Finance, Department of Revenue, New Delhi. I hereby declare Vill: Jalalpur, Tehsil-Rajpura, Distt.Patiala (PB.) to be a warehousing Station under Section 9 of the Customs Act, 1962 (52 of 1962) for the pupose of setting up of Hundred per cent Export Oriented Undertaking (100% EOU).

[C. No. VIII(48) CUS/EOU/KBCIL/42/03]

F. M. JASWAL, Commissioner

नई दिल्ली, 1 अप्रैल, 2004

का० आ० 919.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उपनियम (4) के अनुसरण में राजस्व विभाग के निम्नलिखित कार्यालयों, जिनके 80% से अधिक कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है :—

शहर	कार्यालय
शिमला	मुख्य आयकर आयुक्त, रेलवे बोर्ड भवन, शिमला आयकर आयुक्त कार्यालय, रेलवे बोर्ड भवन, शिमला आयकर आयुक्त (अपील), शिमला आयकर अपर आयुक्त, एस.डी.-ए. काम्प्लैक्स, कसुम्प्टी आयकर उपायुक्त (सर्कल), एस.डी.ए. काम्प्लैक्स, कसुम्प्टी आयकर अधिकारी, वार्ड-1, एस.डी.ए. काम्प्लैक्स, कसुम्प्टी आयकर, अधिकारी, वार्ड-2, एस.डी-ए. काम्प्लैक्स, कसुम्प्टी आयकर, अधिकारी, वार्ड-3, एस.डी.ए. काम्प्लैक्स, कसुम्प्टी आयकर अधिकारी, रामपुर, बुशहर
सोलन	आयकर अपर आयुक्त, सोलन आयकर उपायुक्त, सर्कल सोलन आयकर अधिकारी, वार्ड-1, सोलन कर वसूली अधिकारी, सोलन
परवाणु	आयकर अधिकारी कार्यालय
नाहन	आयकर अधिकारी कार्यालय
मण्डी	आयकर अपर आयुक्त, मण्डी रेंज, मण्डी आयकर सहायक आयुक्त (सर्कल), मण्डी आयकर अधिकारी वार्ड-1, मण्डी
बिलासपुर	आयकर अधिकारी कार्यालय
हमीरपुर	आयकर अधिकारी कार्यालय
कुल्लू	आयकर अधिकरी कार्यालय
पालमपुर	आयकर संयुक्त आयुक्त, पालमपुर रेंज, पालमपुर आयकर सहायक आयुक्त (सर्कल), पालमपुर आयकर अधिकारी वार्ड-1 पालमपुर आयकर अधिकारी वार्ड-2 पालमपुर कर वसूली अधिकारी, पालमपुर
नुरपूर	आयकर अधिकारी कार्यालय
डलहौजी	आयकर अधिकारी कार्यालय
ऊना	आयकर अधिकारी कार्यालय

[फा. सं. 11011/5/2002-हिन्दी-3]

स्नेहलता श्रीवास्तव, संयुक्त सचिव

New Delhi, the 1st April, 2004

S. O. 919.— In pursuance of Sub rule (4) of Rule 10 of the Official Language (Use for official purposes of the Union) Rules, 1976, the Central Government, hereby notifies the following offices of the Department of Revenue, whereof more than 80% of the staff have acquired the working knowledge of Hindi :

City	Office
Simla	Chief Commissioner of Income Tax, Railway Borad Bhawan, Simla Office of the Income Tax Commissioner, Railway Board Bhawan, Simla Commissioner of Income Tax (Appeal), Simla Additional Commissioner of Income Tax, S.D.A. Complex, Kusumpti Deputy Commissioner of Income Tax (Circle), S.D.A. Complex, Kusumpti Income Tax Officer, Ward-I, S.D.A.Complex, Kusumpti Income Tax Officer, Ward-II, S.D.A. Complex, Kusumpti Income Tax Officer, Ward-III, S.D.A. Complex, Kusumpti. Income Tax Officer, Rampur, Bushher.
Solan	Additional Commissioner of Income Tax, Solan. Deputy Commissioner of Income Tax, Circel Solan Income Tax Officer, Ward-I, Solan Tax Recovery Officer, Solan
Parvanu	Office of the Income Tax Officer,
Nahan	Office of the Income Tax Officer,
Mandi	Additional Commissioner of Income Tax, Mandi Range, Mandi. Asstt. Commissioner of Income Tax (Circle), Mandi. Income Tax Officer, Ward-I, Mandi.
Bilaspur	Office of the Income Tax Officer.
Hamirpur	Office of the Income Tax Officer.
Kullu	Office of the Income Tax Officer.
Palampur	Joint Commissioner of Income Tax, Palampur Range, Palampur. Asstt. Commissioner of Income Tax (Circle), Palampur. Income Tax Officer, Ward-I, Palampur. Income Tax Officer, Ward-II, Palampur. Tax Recovery Officer, Palampur.
Nurpoor	Office of the Income Tax Officer.
Dalhauzi	Office of the Income Tax Officer.
Una	Office of the Income Tax Officer.

[F. No. 11011/5/2002-Hindi-3]

SNEHLATA SHRIVASTAVA, Jt. Secy.

(आर्थिक कार्य विभाग)

(बैंकिंग प्रभाग)

(क्षेत्रीय ग्रामीण बैंक अनुभाग)

नई दिल्ली, 8 अप्रैल, 2004

का. आ. 920.—प्रादेशिक ग्रामीण बैंक अधिनियम, 1976 (1976 का 21) की धारा 4 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार भारतीय रिजर्व बैंक, राष्ट्रीय कृषि और ग्रामीण विकास बैंक तथा यूको बैंक से परामर्श करने के पश्चात् एतद्द्वारा भारत सरकार, वित्त मंत्रालय, आर्थिक कार्य विभाग (बैंकिंग प्रभाग) की भारत के असाधारण राजपत्र, भाग II खण्ड 3, उपखण्ड (ii) में प्रकाशित दिनांक 1 अप्रैल, 1984 की अधिसूचना सं. का. आ. 235 (अ) में निम्नलिखित संशोधन करती है।

उक्त अधिसूचना में "उस स्थान के रूप में नरसिंहपुर, जहां महाकौशल क्षेत्रीय ग्रामीण बैंक का प्रधान कार्यालय होगा" शब्दों के स्थान पर "उस स्थान के रूप में जबलपुर, जहां महाकौशल क्षेत्रीय ग्रामीण बैंक का प्रधान कार्यालय होगा" शब्द प्रतिस्थापित किए जाएंगे।

[फा. सं. 7(7)/2003-आरआरबी]

जी० बी० सिंह, अवर सचिव

टिप्पणी : मूल नियम दिनांक 1 अप्रैल, 1984 की अधिसूचना सं. का. आ. 235 के तहत प्रकाशित किए गए थे।

(Department of Economic Affairs)

(Banking Division)

(Regional Rural Banks Section)

New Delhi, the 8th April, 2004

S. O. 920.—In exercise of the powers conferred by Sub-section (1) of Section 4 of the Regional Rural Banks Act, 1976 (21 of 1976), the Central Government after consultations with the Reserve Bank of India, National Bank for Agriculture and Rural Development and UCO Bank hereby makes the following amendment in the notification of the Government of India in the Ministry of Finance, Department of Economic Affairs (Banking Division), number S.O. 235 (E) dated the 1st April, 1984 published in Gazette of India, Extraordinary, Part II—Section 3 Sub-section (ii).

In the said notification, for the words "Narsinghpur as the place where Mahakaushal Kshetriya Gramin Bank shall have its head office" the words "Jabalpur as the place where Mahakaushal Kshetriya Gramin Bank shall have its head office" shall be substituted.

[F. No. 7(7)/2003-RRB]

G. B. SINGH, Under Secy.

Note : The principal rules were published vide notification number S. O. 235 (E) dated the 1st April, 1984.

विदेश मंत्रालय

(सी. पी. वी. प्रभाग)

नई दिल्ली, 1 अप्रैल, 2004

का. आ. 921.—राजनयिक कौंसली अधिकरी (शपथ एवं शुल्क) अधिनियम 1948 (1948 का 41वां) की धारा 2 के अंक (क) के अनुसरण में केन्द्रीय सरकार एतद्द्वारा भारत का प्रधान कौंसलावास, हो ची मिंन सिटी में श्री अरिजीत लाहा, निजी सहायक को 01-04-2004 से सहायक कौंसली अधिकारी का कार्य करने हेतु प्राधिकृत करती है।

[सं. टी-4330/01/2004]

उपेन्द्र सिंह रावत, अवर सचिव (कौंसुलर)

MINISTRY OF EXTERNAL AFFAIRS

(C.P.V. Division)

New Delhi, the 1st April, 2004

S. O. 921.—In pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1948), the Central Government hereby authorise Shir Arijit Laha, Personal Assistant in the Consulate General of India, Ho Chi Minh City to perform the duties of Assistant Consular Officer with effect from 01-04-2004.

[No. T.-4330/01/2004]

U. S. RAWAT, Under Secy. (Cons.)

कोयला मंत्रालय

शुद्धिपत्र

नई दिल्ली, 2 अप्रैल, 2004

का. आ. 922.—भारत के राजपत्र, भाग-II खंड-3, उपखंड (ii) में तारीख 14 फरवरी, 2004 के पृष्ठ क्रमांक 637 से 640 पर प्रकाशित भारत सरकार के कोयला मंत्रालय की अधिसूचना संख्या का.आ. 342 तारीख 29 जनवरी, 2004 के

पृष्ठ क्रमांक 638 पर—

ग्राम मार्डा में अर्जित किए जाने वाले प्लॉट संख्यांक की

प्रथम पंक्ति में -

"77/1ग, 77/ख" के स्थान "77/1क, 77/1ख, 77/1ग" पढ़ा जाए।

छटी पंक्ति में—

"227/1, 227/1" के स्थान पर "227/1, 227/2" पढ़ा जाए।

सीमा वर्णन में —

रेखा क - ख की 10 वी पंक्ति में -

"प्लाट संख्या 163घ, 163ग, 163क, 162 की बाहरी सीमा के साथ गुजरती है"

के स्थान पर

"प्लाट संख्या 163घ, 163ग, 163ख, 163क, 162 की बाहरी सीमा के साथ गुजरती है"

पढ़ा जाए।

[फा. सं. 43015/11/2002-पी.आर.आई. डब्ल्यू]

संजय बहादुर, निदेशक

शुद्धिपत्र

नई दिल्ली, 7 अप्रैल, 2004

का. आ. 923.—भारत के राजपत्र, भाग-II, खंड-3, उपखंड (ii) में तारीख 21 फरवरी, 2004 के पृष्ठ क्रमांक 719 से 723 पर प्रकाशित भारत सरकार के कोयला मंत्रालय की अधिसूचना संख्या का.आ. 399 तारीख 12 जनवरी, 2004 के

पृष्ठ क्रमांक 721 पर -

सीमा वर्णन :—

क - ख :	प्रथम पंक्ति में प्लॉट संख्यांक "2/ए1-2 2/ए2-2/ए3" के स्थान पर "2/ए1- 2/ए2 - 2/ए3" पढ़ा जाए।
ख - ग :	तृतीय पंक्ति में "और ग्राम धारा की सम्मिलित ग्राम पर बिन्दु 'ग' पर मिलती है" के स्थान पर "और ग्राम घाटरोहना की सम्मिलित ग्राम सीमा पर बिन्दु 'ग' पर मिलती है" पढ़ा जाए।
घ-ङ-च :	द्वितीय पंक्ति में "प्लॉट संख्यांक से होते हुए जाती है" के स्थान पर "प्लॉट संख्यांक" पढ़ा जाए।
छ-ज-झ :	द्वितीय पंक्ति में "148/1ए-2 - 148/1ए-3 - 148/1बी - पार करती है" के स्थान पर 148/1ए-2 - 148/1ए-3 - 148/1बी - 148/1बी-1 - 148/2-148/3 में से होकर गुजरती है एवं प्लॉट संख्या 156 से होकर नाला पार करती है, पढ़ा जाए।

[फा.सं. 43015/12/2002-पी.आर.आई. डब्ल्यू]

संजय बहादुर, निदेशक

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 7 अप्रैल, 2004

का. आ. 924.—केन्द्रीय सरकार ने पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) (जिसे इसमें इसके पश्चात उक्त अधिनियम कहा गया है) की धारा 3 की उपधारा (1) के अधीन जारी की गई भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना संख्या का. आ. 2589 तारीख 2 सितम्बर, 2003, जो भारत के राजपत्र तारीख 13 सितम्बर, 2003 में प्रकाशित की गई थी, द्वारा उस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में महाराष्ट्र राज्य में पानेवाडी (मनमाड) से मध्यप्रदेश राज्य में मांगल्या (इंदौर) तक पेट्रोलियम उत्पादों के परिवहन के लिए मुंबई-मनमाड पाइपलाइन विस्तार परियोजना के माध्यम से भारत पेट्रोलियम कॉरपोरेशन लिमिटेड द्वारा पाइपलाइन बिछाने के प्रयोजन के लिए उपयोग के अधिकार का अर्जन के अपने आशय की घोषणा की थी;

और उक्त राजपत्र अधिसूचना की प्रतियां जनता को तारीख 15 अक्टूबर, 2003 को उपलब्ध करा दी गई थीं;

और सक्षम प्राधिकारी ने, उक्त अधिनियम की धारा 6 की उपधारा (1) के अधीन केन्द्रीय सरकार को अपनी रिपोर्ट दे दी है;

और केन्द्रीय सरकार ने, उक्त रिपोर्ट पर विचार करने के पश्चात् और यह समाधान हो जाने पर कि उक्त भूमि पाइपलाइन बिछाने के लिए अपेक्षित है, उसमें उपयोग के अधिकार का अर्जन करने का विनिश्चय किया है;

अत: अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह घोषणा करती है कि अनुसूची में विनिर्दिष्ट उक्त भूमि में पाइपलाइन बिछाने के लिए उपयोग के अधिकार का अर्जन किया जाए;

और केन्द्रीय सरकार उक्त अधिनियम की धारा 6 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है कि उक्त भूमि में उपयोग का अधिकार इस घोषणा के प्रकाशन की तारीख से केन्द्रीय सरकार में निहित होने की बजाए, सभी विल्लंगमों से मुक्त, भारत पेट्रोलियम कॉरपोरेशन लिमिटेड में निहित होगा।

अनुसूची

तहसील : ठिकरी जिला: बड़वानी राज्य : मध्यप्रदेश

ग्राम का नाम	सर्वे नम्बर	क्षेत्रफल हैक्टेयर
1	2	3
1 खेडी	32/1	0.1830
	28/1	0.1080
	28/2	0.0940
	28/3	0.0680
	33	0.0720
2 ठीकरी	12/1, 12/2, 12/3	0.1382
	6/4	0.0300
3 शेरपुरा	36/1	0.0510
4 सेगवाल	262	0.0798
	285/1	0.0580
	285/4	0.1390
5 सिरसाला	114/4	0.0540
	114/17	0.0540
	114/14	0.0540
	114/8	0.0060
	84/3, 84/5	0.2340
6 खुरमपुरा	9	0.0900
7 बरसलाय	86/3	0.0180
	368	0.0540
	315/1/1	0.0120

[फा. सं. आर-31015/34/2001-ओ आर-II]

हरीश कुमार, अवर सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 7th April, 2004

S. O. 924.—Whereas by notification of the Government of India in the Ministry of petroleum and Natural Gas number S. O. 2589. dated the 2nd September, 2003, issued under Sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962) (hereinafter referred to as the said Act), published in the Gazette of India dated the 13th September, 2003, the Central Government declared its intention to acquire the right of user in the land, specified

in the Schedule appended to that notification for the purpose of laying pipeline for transportation of petroleum products through Mumbai-Manmad Pipeline Extension Project from Panewadi (Manmad) in the State of Maharashtra to Manglya (Indore) in the State of Madhya Pradesh by Bharat Petroleum Corporation Limited;

And whereas the copies of the said Gazette notification were made available to the public on the 15th October, 2003;

And whereas the competent authority has, under Sub-section (1) of Section 6 of the said Act, submitted his report to the Central Government;

And whereas the Cental Government, after considering the said report and on being satisfied that the said land is required for laying the pipeline, has decided to acquire the right of user therein;

Now therefore, in exercise of the powers conferred by sub-section (1) of Section 6 of the said, Act, the Central Government hereby declares that the right of user in the said land specified in the Schedule is hereby acquired for laying the pipeline;

And further, in exercise of the powers conferred by Sub-section (4) of Section 6 of the said Act, the Central Government hereby directs that the right of user in the said land for laying the pepeline shall, instead of vesting in the Central Government, vest on the date of the publication of this declaration, in Bharat Petroleum Corporation Limited, free from all encumbrances.

SCHEDULE

Tehsil : Thikri District : Badwani State : Madhya Pradesh

	Name of Village	Survey No.	Area in Hectare
1	Khedi	32/1	0.1830
		28/1	0.1080
		28/2	0.0940
		28/3	0.0680
		33	0.0720
2	Thikri	12/1, 12/2, 12/3	0.1382
		6/4	0.0300
3	Sherpura	36/1	0.0510
4	Segwal	262	0.0798
		285/1	0.0580
		285/4	0.1390
5	Sirsala	114/4	0.0540
		114/17	0.0540
		114/14	0.0540
		114/8	0.0060
		84/3, 84/5	0.2340
6	Khurumpura	9	0.0900
7	Barsalay	86/3	0.0180
		368	0.0540
		315/1/1	0.0120

[F. No. R-31015/34/2001-OR-II]
HARISH KUMAR, Under Secy.

नई दिल्ली, 12 अप्रैल, 2004

का. आ. 925.—केन्द्रीय सरकार ने पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 3 की उपधारा (1) के अधीन जारी की गई भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना संख्या का. आ. 2467 तारीख 19 अगस्त, 2003, जो भारत के राजपत्र तारीख 30 अगस्त, 2003 में प्रकाशित की गई थी, द्वारा उस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में महाराष्ट्र राज्य में पानेवाडी (मनमाड) से मध्यप्रदेश राज्य में मांगल्या (इंदौर) तक पेट्रोलियम उत्पादों के परिवहन के लिए मुंबई-मनमाड पाइपलाइन विस्तार परियोजना के माध्यम से भारत पेट्रोलियम कॉरपोरेशन लिमिटेड द्वारा पाइपलाइन बिछाने के प्रयोजन के लिए उपयोग के अधिकार का अर्जन के अपने आशय की घोषणा की थी;

और उक्त राजपत्र अधिसूचना की प्रतियां जनता को तारीख 10 अक्टूबर, 2003 को उपलब्ध करा दी गई थीं;

और सक्षम प्राधिकारी ने, उक्त अधिनियम की धारा 6 की उपधारा (1) के अधीन केन्द्रीय सरकार को अपनी रिपोर्ट दे दी है;

और केन्द्रीय सरकार ने, उक्त रिपोर्ट पर विचार करने के पश्चात् और यह समाधान हो जाने पर कि उक्त भूमि पाइपलाइन बिछाने के लिए अपेक्षित है, उसमें उपयोग के अधिकार का अर्जन करने का विनिश्चय किया है;

अतः अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह घोषणा करती है कि अनुसूची में विनिर्दिष्ट उक्त भूमि में पाइपलाइन बिछाने के लिए उपयोग के अधिकार का अर्जन किया जाए;

और केन्द्रीय सरकार उक्त अधिनियम की धारा 6 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है कि उक्त भूमि में पाइपलाइन बिछाने के लिए उपयोग का अधिकार इस घोषणा के प्रकाशन की तारीख से केन्द्रीय सरकार में निहित होने की बजाए, सभी विल्लंगमों से मुक्त, भारत पेट्रोलियम कॉरपोरेशन लिमिटेड में निहित होगा।

अनुसूची

तहसील : शिरपुर जिला : धुलिया राज्य : महाराष्ट्र

ग्राम का नाम	गट/सर्वे नंबर	क्षेत्र		
		हैक्टर	आर	चौरस मीटर
1	2	3	4	5
1. थालनेर	280/2	0	07	40
	408/2	0	28	80
	413/1पैकी	0	02	40
	393/1पैकी	0	02	88

1	2	3	4	5
2. ताजपुरी	186	0	16	74
	157/ब/1ब	0	14	28
	102	0	05	17
	90 पैकी	0	04	48
3. गरताड	44/1पैकी	0	05	56
4. दहिवद	137	0	02	16
	282/पैकी	0	00	90
	285/अ/4	0	08	18
	373 पैकी	0	10	32
	385/3/1 पैकी	0	05	22
	544/1+2 पैकी	0	05	76
5. नटवाडे	34	0	30	60
(लौकी)	44/पैकी	0	39	96
	46/पैकी	0	22	32
	50/2/1	0	10	80
	51/पैकी	0	11	16
	9/2/1	0	11	00
	9/2/2	0	11	70
	9/1/पैकी	0	24	12
6. सुले	30/ब पैकी	0	29	70
	30/ब/9 पैकी	0	20	42
	30/ब/11 पैकी	0	11	34
	30/ब/13 पैकी	0	24	66
	30/ब/10 पैकी	0	15	48
	20 पैकी	0	60	50
	25 पैकी	0	08	44
7. हाडाखेड	58/4	0	20	00
8. सांगवी	7/पैकी	0	25	38

[फा. सं. आर-31015/14/2001-ओ आर-II]

हरीश कुमार, अवर सचिव

New Delhi, the 12th April, 2004

S.O. 925 .—Whereas by notification of the Government of India in the Ministry of Petroleum and Natural Gas number S.O. 2467, dated the 19th August, 2003, issued under sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962) (hereinafter referred to as the said Act), published in the Gazette of India dated the 30th August, 2003, the Central Government declared its intention to acquire the right of user in the land, specified in the Schedule appended to that notification for the purpose of laying pipeline for transportation of petroleum products through Mumbai-Manmad Pipeline Extension Project from Panewadi (Manmad) in the State of Maharahtra to Manglya (Indore) in the State of Madhya Pradesh by Bharat Petroleum Corporation Limited;

And whereas the copies of the said Gazette notification were made available to the public on the 10th October, 2003;

And whereas the competent authority has, under sub-section (1) of section 6 of the said Act, submitted report to the Central Government;

And whereas the Cental Government, after considering the said report and on being satisfied that the said land is required for laying the pipeline, has decided to acquire the right of user therein;

Now therefore, in exercise of the powers conferred by sub-section (1) of sectin 6 of the said Act, the Central Government hereby declares that the right of user in the said land specified in the Schedule appended to this notification is hereby acquired for laying the pipeline;

And further, in exercise of the powers conferred by sub-section (4) of section 6 of the said Act, the Central Government hereby directs that the right of user in the said land for laying the pipeline shall, instead of vesting in the Central Government, vest on the date of the publication of this declaration, in Bharat Petroleum Corporation Limited, free from all encumbrances.

SCHEDULE

Tahsil : Shirpur District : Dhule State : Maharashtra

Name of Village	Gat/Survey Numbers	Area Hectares	Area	Sq. Mts.
1	2	3	4	5
1. Thalner	280/2	0	07	40
	408/2	0	28	80
	413/1 Pt.	0	02	40
	393/1 Pt.	0	02	88
2. Tajpuri	186	0	16	74
	157/B/1B	0	14	28
	102	0	05	17
	90 Pt.	0	04	48

1	2	3	4	5
3. Gartad	44/1 Pt.	0	05	56
4. Dahiwad	137	0	02	16
	282/P	0	00	90
	285/A/4	0	08	18
	373 Pt.	0	10	32
	385/3/1 Pt.	0	05	22
	544/1+2 Pt.	0	05	76
5. Natwade	34	0	30	60
(Lauki)	44/P	0	39	96
	46/P	0	22	32
	50/2/1	0	10	80
	51/P	0	11	16
	9/2/1	0	11	00
	9/2/2	0	11	70
	9/1/P	0	24	12
6. Sule	30/B/P	0	29	70
	30/B/9P	0	20	42
	30/B/11P	0	11	34
	30/B/13P	0	24	66
	30/B/10P	0	15	48
	20 Pt.	0	60	50
	25 Pt.	0	08	44
7. Hadakhed	58/4	0	20	00
8. Sangvi	7/Pt.	0	25	38

[File No. R-31015/14/2001-OR-II]

HARISH KUMAR, Under Secy.

नई दिल्ली, 12 अप्रैल, 2004

का. आ. 926.—केन्द्रीय सरकार ने पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 3 की उपधारा (1) के अधीन जारी की गई भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना संख्या का. आ. 2590 तारीख 5 सितम्बर, 2003, जो भारत के राजपत्र तारीख 13 सितम्बर, 2003 में प्रकाशित की गई थी, द्वारा उस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में महाराष्ट्र राज्य में पानेवाडी (मनमाड) से मध्यप्रदेश राज्य में मांगल्या (इंदौर) तक पेट्रोलियम उत्पादों के परिवहन के लिए मुंबई-मनमाड पाइपलाइन विस्तार परियोजना के माध्यम से भारत पेट्रोलियम कॉरपोरेशन लिमिटेड द्वारा पाइपलाइन बिछाने के प्रयोजन के लिए उपयोग के अधिकार का अर्जन के अपने आशय की घोषणा की थी;

और उक्त राजपत्र अधिसूचना की प्रतियां जनता को तारीख 15 अक्टूबर, 2003 को उपलब्ध करा दी गई थीं;

और सक्षम प्राधिकारी ने, उक्त अधिनियम की धारा 6 की उपधारा (1) के अधीन केन्द्रीय सरकार को अपनी रिपोर्ट दे दी है;

और केन्द्रीय सरकार ने, उक्त रिपोर्ट पर विचार करने के पश्चात्, और यह समाधान हो जाने पर कि उक्त भूमि पाइपलाइन बिछाने के लिए अपेक्षित है, उसमें उपयोग के अधिकार का अर्जन करने का विनिश्चय किया है;

अत: अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह घोषणा करती है कि अनुसूची में विनिर्दिष्ट उक्त भूमि में पाइपलाइन बिछाने के लिए उपयोग के अधिकार का अर्जन किया जाता है;

और केन्द्रीय सरकार उक्त अधिनियम की धारा 6 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है कि उक्त भूमि में पाइपलाइन बिछाने के लिए उपयोग का अधिकार इस घोषणा के प्रकाशन की तारीख से केंन्द्रीय सरकार में निहित होने की बजाए, सभी विल्लंगमों से मुक्त, भारत पेट्रोलियम कॉरपोरेशन लिमिटेड में निहित होगा।

अनुसूची

तहसील : महेश्वर जिला: खरगोन राज्य : मध्यप्रदेश

ग्राम का नाम	सर्वे नम्बर	क्षेत्रफल हैक्टेयर
1. भवनतलाई	14	0.2530
	22/4/1	0.0780
	22/3	0.0710
2. बाकानेर	19	0.0360
	35	0.1320
	107/3, 107/7	0.2620
	119/2	0.0400
3. कुसंबिया	5/1, 5/2	0.1885
4. काकड़दा	32, 36/2	0.1320
	19/1/1 (शासकीय चारागाह)	0.5669
	18/1, 18/2	0.1569

[फा. सं. आर-31015/37/2001-ओ आर-II]

हरीश कुमार, अवर सचिव

New Delhi, the 12th April, 2004

S.O. 926.—Whereas by notification of the Government of India in the Minsitry of Petroleum and Natural Gas number S.O. 2590, dated the 5th September, 2003, issued under sub-section (1) of section 3 of the

Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962) (hereinafter referred to as the said Act), published in the Gazette of India dated the 13th September, 2003, the Central Government declared its intention to acquire the right of user in the land, specified in the Schedule appended to that notification for the purpose of laying pipeline for transportation of petroleum products through Mumbai-Manmad Pipeline Extension Project from Panewadi (manmad) in the Sate of Maharashtra to Manglya (Indore) in the State of Madhya Pradesh by Bharat Petroleum Corporation Limited;

And whereas the copies of the said Gazette notification were made available to the public on the 15th October, 2003;

And whereas the competent authority has, under sub-section (1) of section 6 of the said Act, submitted report to the Central Government;

And whereas the Cental Government, after considering the said report and on being satisfied that the said land is required for laying the pipeline, has decided to acquire the right of user therein;

Now therefore, in exercise of the powers conferred by sub-section (1) of sectin 6 of the said Act, the Central Government hereby declares that the right of user in the said land specified in the Schedule appended to this notification is hereby acquired for laying the pipeline;

And further, in exercise of the powers conferred by sub-section (4) of section 6 of the said Act, the Central Government hereby directs that the right of user in the said land for laying the pipeline shall, instead of vesting in the Central Government, vest on the date of the publication of this declaration in Bharat Petroleum Corporation Limited, free from all encumbrances.

SCHEDULE

Tehsil : Maheshwar District : Khargone State : Madhya Pradesh

Name of Village	Survey No.	Area in Hectare
1. Bhavantalali	14	0.2530
	22/4/1	0.0780
	22/3	0.0710
2. Bakaner	19	0.0360
	35	0.1320
	107/3, 107/7	0.2620
	119/2	0.0400
3. Kusumbiya	5/1, 5/2	0.1885
4. Kakarda	32, 36/2	0.1320
	19/1/1(G.L)	0.5669
	18/1, 18/2	0.1569

[F. No. R-31015/37/2001-OR-II]

HARISH KUMAR, Under Secy.

नई दिल्ली, 12 अप्रैल, 2004

का. आ. 927.—केन्द्रीय सरकार ने पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 3 की उपधारा (1) के अधीन जारी की गई भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना संख्या का. आ. 2723 तारीख 22 सितम्बर, 2003, जो भारत के राजपत्र तारीख 27 सितम्बर, 2003 में प्रकाशित की गई थी, द्वारा उस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में महाराष्ट्र राज्य में पानेवाडी (मनमाड) से मध्यप्रदेश राज्य में मांगल्या (इंदौर) तक पेट्रोलियम उत्पादों के परिवहन के लिए मुंबई-मनमाड पाइपलाइन विस्तार परियोजना के माध्यम से भारत पेट्रोलियम कॉरपोरेशन लिमिटेड द्वारा पाइपलाइन बिछाने के प्रयोजन के लिए उपयोग के अधिकार का अर्जन के अपने आशय की घोषणा की थी;

और उक्त राजपत्र अधिसूचना की प्रतियां जनता को तारीख 18 नवम्बर, 2003 को उपलब्ध करा दी गई थीं;

और सक्षम प्राधिकारी ने, उक्त अधिनियम की धारा 6 की उपधारा (1) के अधीन केन्द्रीय सरकार को अपनी रिपोर्ट दे दी है;

और केन्द्रीय सरकार ने, उक्त रिपोर्ट पर विचार करने के पश्चात्, और यह समाधान हो जाने पर कि उक्त भूमि पाइपलाइन बिछाने के लिए अपेक्षित है, उसमें उपयोग के अधिकार का अर्जन करने का विनिश्चय किया है;

अत: अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह घोषणा करती है कि अनुसूची में विनिर्दिष्ट उक्त भूमि में पाइपलाइन बिछाने के लिए उपयोग के अधिकार का अर्जन किया जाता है;

और केन्द्रीय सरकार उक्त अधिनियम की धारा 6 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है कि उक्त भूमि में पाइपलाइन बिछाने के लिए उपयोग का अधिकार इस घोषणा के प्रकाशन की तारीख से केन्द्रीय सरकार में निहित होने की बजाए, सभी विल्लंगमों से मुक्त, भारत पेट्रोलियम कॉरपोरेशन लिमिटेड में निहित होगा।

अनुसूची

तहसील : सेंधवा जिला : बड़वानी राज्य : मध्यप्रदेश

ग्राम का नाम	सर्वे नम्बर	क्षेत्र हेक्टेयर
1. जामली	109/1/1, 109/3	0.0650
	21	0.1800
	23/2	0.2630
	151 भाग	0.6480
	152	0.0400

1	2	3	4	5
2.	कलालदा	86/2		0.0630
3.	वाकी	46		0.1220
		44/1		0.0780
		72		0.0340
		74/3		0.0900
		56		0.0382
4.	बनिहार	5		0.0144
		12		0.4000
		1/5		0.1760
		1/6		0.1640
		11, 13		0.2060
		45		0.1750
		2/1		0.3680
		2/2		0.3100
5.	नवलपुरा	138/1		0.0324
		182		0.1490
		21/1, 1/2/4		0.2290
		2/1/2		0.3558
		148/13		0.2160
		178 (श.नाला)		0.0216
6.	जुलवानिया	201/6		0.0320
7.	अंजनगॉव	62/1/1/1/1/1/1/2 52/2/1/1/1 53/1, 52/2/1		0.2240
		99/6		0.0630
		14-52/2/1/1/2		0.3660
8.	भामनिया	17/3		0.1270
		111		0.1020
9.	शाहपुरा	107		0.0120
		161/32/1		0.2376
		93/2		0.2050
10.	नान्दया	169/217/1		0.3240
		169/187/1		0.1210
		169/186/1		0.2520
		169/185		0.1440
11.	सोलवन	12		0.2080
		11/2		0.0680
		44/1		0.1800
		61/2		0.0900
		262/2		0.1080
		340/3, 340/4		0.3040
		51/2		0.4430
		39/15		0.1850
		16/12		0.0990
		16/13		0.3240
		16/16		0.1170
		342 (श.भूमि)		0.1800
		17		0.0720
12.	मालवन	98/1, 98/2		0.0074
		306		0.0650
		288/3		0.4180
		301/1		0.1080

[फा. सं. आर-31015/26/2001-ओ. आर.-II]

हरीश कुमार, अवर सचिव

New Delhi, the 12th April, 2004

S.O. 927.—Whereas by notification of the Government of India in the Ministry of Petroleum and Natural Gas number S.O. 2723, dated the 22nd September, 2003, issued under sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962) (hereinafter referred to as the said Act), published in the Gazette of India dated the 27th September, 2003, the Central Government declared its intention to acquire the right of user in the land, specified in the Schedule appended to that notification for the purpose of laying pipeline for transportation of petroleum products through Mumbai-Manmad Pipeline Extention Project from Panewadi (Manmad) in the Sate of Maharahtra to Manglya (Indore) in the State of Madhya Pradesh by Bharat Petroleum Corporation Limited;

And whereas copies of the said Gazette notification were made available to the public on the 18th November, 2003;

And whereas the competent authority has, under sub-section (1) of section 6 of the said Act, submitted report to the Central Government;

And whereas the Cental Government, after considering the said report and on being satisfied that the said land is required for laying the pipeline, has decided to acquire the right of user therein;

Now therefore, exercise of the powers conferred by sub-section (1) of section 6 of the said Act, the Central Government hereby declares that the right of user in the said land specified in the Schedule appended to this notification is hereby acquired for laying the pipeline;

And further, in exercise of the powers conferred by sub-section (4) of section 6 of the said Act, the Central Government hereby directs that the right of user in the said land for laying the pipeline shall, instead of vesting in the Central Government, vest on the date of the publication of this declaration in Bharat Petroleum Corporation Limited, free from all encumbrances.

SCHEDULE

Tehsil : Sendhwa District : Badwani State : Madhya Pradesh

Name of Village	Survey No.	Area in Hectare
1. Jamli	109/1/1, 109/3	0.0650
	21	0.1800
	23/2	0.2630
	151 Part	0.6480
	152	0.0400
2. Kalalda	86/2	0.0630
3. Vaki	46	0.1220
	44/1	0.0780
	72	0.0340
	74/3	0.0900
	56	0.0382
4. Banihar	5	0.0144
	12	0.4000
	1/5	0.1760
	1/6	0.1640
	11, 13	0.2060
	45	0.1750
	2/1	0.3680
	2/2	0.3100
5. Navalpura	138/1	0.0324
	182	0.1490
	21/1, 1/2/4	0.2290
	2/1/2	0.3558
	148/13	0.2160
	178 (G.Drain)	0.0216
6. Julwaniya	201/6	0.0320
7. Anjangaon	62/1/1/1/1/1/1/2, 52/2/1/1/1, 53/1, 52/2/1	0.2240
	99/6	0.0630
	14-52/2/1/1/2	0.3660
8. Bhamniya	17/3	0.1270
	111	0.1020
9. Shahpura	107	0.0120
	161/32/1	0.2376
	93/2	0.2050
10. Nandya	169/217/1	0.3240
	169/187/1	0.1210
	169/186/1	0.2520
	169/185	0.1440
11. Solvan	12	0.2080
	11/2	0.0680
	44/1	0.1800
	61/2	0.0900
	262/2	0.1080
	340/3, 340/4	0.3040
	51/2	0.4430
	39/15	0.1850
	16/12	0.0990
	16/13	0.3240
	16/16	0.1170
	342 (G.L.)	0.1800
	17	0.0720
12. Malvan	98/1, 98/2	0.0074
	306	0.0650
	288/3	0.4180
	301/1	0.1080

[F. No. R-31015/26/2001-OR-II]

HARISH KUMAR, Under Secy.

श्रम मंत्रालय

नई दिल्ली, 19 मार्च, 2004

का.आ. 928.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, बजाज इलेक्ट्रीकल लिमिटेड प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में राष्ट्रीय औद्योगिक अधिकरण मुम्बई (संदर्भ संख्या एन. टी. बी.-1/1997) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-3-2004 को प्राप्त हुआ था।

[सं. एल-22013/1/2004-आई.आर.(सी-II)]

एन० पी० केशवन, डेस्क अधिकारी

MINISTRY OF LABOUR

New Delhi, the 19th March, 2004

S.O. 928.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.NTB-1 of 1997) of the National Industrial-Tribunal, Mumbai as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bajaj Electrical Limited and their workmen, which was received by the Central Government on 15-03-2004.

[No. L-22013/1/2004-IR (C-II)]

N.P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE NATIONAL INDUSTRIAL TRIBUNAL AT MUMBAI

Present :

Shri Justice S.C. Pandey Presiding Officer

REF. NTB-1 OF 1997

PARTIES : Employers in relation to the management of Bajaj Electricals Ltd.

AND

Their workmen

APPEARANCES :

For the Management :		Shri. C.V. Pawaskar, Adv.
	:	Shri. M.S. Paranjpe Adv.
For the Opp. Party	:	Shri. P. Chidambaram President, All India Bajaj Electricals Employees' Federation
State	:	Maharashtra

Mumbai dated the 20th day of February, 2004.

AWARD

1. This is a reference made by the Central Government to the National Industrial Tribunal, Bombay (henceforth the tribunal) in exercise of powers conferred upon it by sub section 1(A) of Section 10 of the Industrial Disputes Act, 1947 (henceforth the Act) by order dated 8th May, 1997. By the same order, the Central Government constituted the tribunal in exercise of its powers under section 7-B of the Act and ordered that Shri. Justice R.S. Verma shall be the Presiding Officer of the Tribunal with his head quarters at Bombay. The reference made to this tribunal was for adjudicating upon the existing industial dipute between the Bajaj Electricals Limited (henceforth the Company) and its workmen. The terms of the reference as given in the schedule to the order dated 8th May, 1997 are being reproduced as follows:

"Whether the 33 demands of the All India Bajaj Electricals Employees Federation, as mentioned in Annexure 'A' are legal and justified. If so, to what relief the workmen are entitled?"

2. The charter of demands are annexed to the schedule as Enclosure 2. It would be proper to treat it Annexure A. The adjudication upon the dispute could not be completed during the tenure of Justice Shri. R.S. Verma. After his retirement, Shri. Justice C.V. Govardhan took over. He did not complete his terms as the Presiding Officer. He relinquished the office by resignation. Thereafter, the present Presiding Officer joined the office. By notification dated 8th Jan., 2002 the Central Government directed that the present Presiding Officer is appointed as the Presiding Officer of the National Industrial Tribunal pursuant to provisions of Section 7 read with section 8 of the Act. The director sent the copy of the purported notification dated 8th Jan., 2002 which was received by the office on 14th Jan.., 2002. There is presumption that this notification is published in the Gazette of India because the copy of the notification with Hindi version was to sent to the Press. This tribunal therefore began to function on 15-1-2002 and issued notice to the parties for their appearance.

3. The parties appeared on 18-2-2002. It was found that Unions first witness K.K. Vijayan was not fully cross examined on behalf of the company. He was required to be summoned for cross examination by order dated 04-3-2002. The witnes apeared on 8-4-2002. He was fully cross examined and discharged. Thereafter on 16-7-2002 the Union filed the affidavit of T. Vasudev. He was cross examined. Thereafter on 9-8-2002 A.K. Muridharan's affidavit was filed. He too was cross exanind on same day on behalf of the company . Thereafter summons were issued to Mr. Shekh. He appeared on 24-3-2003. He was required to come up for cross examination with entire documents on 24-3-2003. On 24-3-2003, he did not appear but produced the three documents required of him. They were settlements entered into by Crompton Greaves Ltd. with is workmen of Goa, Nasik and Baroda unit. Shri. M.S. Paranjpe learned counsel for the company stated in writing that he did not want to cross examine the witness. Thereafter, the documents filed by the Crompton Greaves company were

exhibited. On 7-4-2003 witness summons were issued to Mr. Sahastrabudhe, General Manager, Philips India. He appeared on 22-4-2003. He was examined by the Union and cross examined on behalf of the company. Thereafter, the Union closed its case. On the same day, the company filed the affidavits of its two witnesses Shri. Yogesh Kudratkar and Shri. V.V. Shahane. The case was adjourned to 25-4-2003 for cross examination of these witnesses for the company. The witness Kudratkar was cross examined on 25-4-2003, 5-5-2003, 6-5-2003, 7-5-2003, 19-5-2003 and 9-6-2003. Similarly, the other witness for the company was cross examined on 16-6-2003, 17-6-2003, 17-7-2003 and 18-7-2003. The cross examination of these witnesses had to be deferred because it so transpired that they did not have the documents with them on which they were questioned. The aforesaid dates coulled out from the order sheet show the dates on which actual cross examination took place. Thereafter, the company took time to file certain documents and the case had to be adjourned for that purpose on 22-7-2003. They were directed to file the documents by 21-8-2003, so that final arguments may commence from 26-8-2003. The arguments commenced on 26-8-2003. Shri Chidambaram, President, All India Employees Federation argued the case on 26-8-2003, 27-8-2003, 28-8-2003, 29-8-2003, 15-9-2003, 16-9-2003, 17-9-2003 and 18-9-2003. He concluded his arguments on 18-9-2003 and the matter was argued by Shri. C. V. Pavaskar, Advocate on that date and then on 19-9-2003, 6-10-2003, 7-10-2003, 8-10-2003, 9-10-2003, 10-10-2003. The arguments were concluded. In the meanwhile an urgent application was filed on 9-10-2003. The company filed reply on 13-10-2003 and the application was heard on 16-10-2003. The application was disposed of by order dated 17-10-2003. Thereafter, the case was closed on 17-10-2003. However, on 21-10-2003 written arguments were submitted on behalf of the company. The Federation thereupon filed its written argument on 27-10-2003. It may be made clear that, while recording the evidence or hearing parties in this, this tribunal could not legitimately, deal with this reference alone on everyday. This reference was listed along with other cases. However, priority was given to this reference in the interest of its early disposal after the order of the Hon'ble High Court in appeal No. 299 of 2003 arising out of writ petition No. 274 of 2003 and the case was heard as far as practicable on day to day basis.

4. Let us now revert to merits of the claim of the workman, it is necessary to consider the statement of claim filed on behalf of the workman by All India Bajaj Electricals Employees' Federation (henceforth the Federation) Only the salient features of the Statement of claim are being considered. An attempt is being made to be comprehensive rather than expansive. It is alleged that the company is public limited company. It markets (i) Gas lamps (ii) Fluorescent Tubes (iii) Fans (iv) Other domestic appliances on lighting fixtures etc. It is further stated that company undertakes jobs of large industrial projects on turn key basis. It is further pleaded that the company is collaborating with M/s. Black and Decker and General Electrical company of U.S.A. These companies are leaders in their respective fields i.e. Power tools and lighting products. The company runs 20 branches in India as per schedule 1. It is thus alleged that company is a leading company in its field. It is stated that workmen at the various units of the establishments of company at different places all over the country have organized themselves into Trade Unions. The Federation is the Apex body to which the trade unions are affiliated. It was asserted that Federation is the sole bargaining agent of all workmen irrespective of the place of their posting.

5. In this paragraph, this tribunal shall give the pleadings in the Statement of claim regarding each of the thirty three demand which are the subject matter of this reference. However, for the sake of brevity and with a view to avoid repetition, this tribunal shall give the briefest minimum of the pleadings.

Demand No. 1 BASIC WAGES : It is asserted that scales of pay of the various category of workman needs to be revised as per Demand No. 1 in Annexure A to the schedule. It is pleaded that the concept of basic wage refers to payment by the employer to the workman certain amount of money for rendering service during a particular period. It excludes allowances by whatever name they are called. It was stated that as per settlement of 1975, the pay scales of the workmen of categories mentioned in the schedule II were revised. Therefore, it was expected that there would be change in the wage structure from 1-1-1996. It was further pleaded that by notice dated 8th May 1986 schedule III indicates that employer unilaterally reduced the pay scale of the settlement of 1975 given in Schedule II. The aforesaid affixation in Schedule III was not a Settlement within the meaning of Section 2(p) of the Act read with 18(1). It was further pleaded that basic wages fixed by the settlement of 1975 fell short of concept proper basic wages in 1-1-1996. It followed wage structure of settlement of 1975 was applicable to the workmen prior to 8th May 1986. However, when this wage structure on higher scale was inadequate that given to employees appointed in 1986 as per schedule III would also be inadequate. it was the contention of the Federation that even if rise in the cost of living index is brought in line with existing prior to Simla Index series, the workmen are entitled to revision on their pay scale so that they lead the life of comfort with the members of their family. Therefore, there is good case for revision of pay scales from 1-1-1996.

Demand No. 2 FITMENT : It is pleaded that since the workmen have been denied the revision of pay scale since 1975, therefore, it is demanded that Rs. 150/- be added to the basic wage received by each employee to his wage as it existed on 31-12-1995. Then he may be fixed in appropriate step applicable to him in the revised scale. If he cannot be fixed in that scale then appropriate step would next higher scale.

Demand No. 3 STAGNATION INCREMENT : It relates to stagnation increment. It is claimed that after a workman reaches the maximum of his pay scale and he is required to serve due to employment, at early age, it would be proper to grant stagnation increment to compensate him for serving in the remaining period.

Demand No. 4 UPGRADATION : It is stated that due to lack of facility of promotion the workman become frustrated especially when there are no rules and regulations for promotion from one rank to another. Hence there was plea for timely upgradation.

Demand No. 5 DEARNESS COMPENSATORY ALLOWANCE : It relates to Dearness Compensatory Allowance it is stated that this allowance is paid to nutralise the rise in cost of living. It is stated that Dearness allowance is calculated on the basis of revised Simla Index. However, that index is took note of the increase in price of only specified commodities. Therefore, the tribunal should not be guided by living index alone. it was also alleged that company paid Dearness allowances to the extent of basis wage upto Rs. 400/-. In the submission of the federation, the ceiling upto Rs. 400/- was unjust and irrational. It was asserted that DCA should be paid to all workmen irrespective of basic wages.

Demand No 6 HOUSE RENT ALLOWANCE : It related to House Rent allowance. It was stated a workman having basic pay Rs. 199/- was given House Rent allowance of Rs. 470/- per month, a workman having basic pay upto Rs. 220/- to Rs. 449/- per month was given Rs. 520/- per month and the workman earning basic pay of Rs. 450/- or above was paid Rs. 600/- per month. It was pleaded that company paid higher House rent allowance to other categories of employees like officers, Managers, executive trainees etc. Further, it was pointed out that those categories of employees got a hike in House Rent allowance to the extent of 30% to 492% within a span of two years between 1995 to 1997. This increase in House rent there categories of employees cast the company to the extent of 216 lakhs approximately. The inflation in the economy had affected the real estate. The rise in prices of the real estate is not considered for fixing the consumer price index. The Federation referred to schedule IV marked collectively being the copies of the circulars of the company dated 16-9-1993, 22-5-1995 and 27-6-1997.

Demand No. 7 LEAVE TRAVEL CONCESSION : It related to leave travel concession. It was stated that workmen were given Leave Travel Allowance. The amount paid was insufficient to defray up and down expenses of a workman and the members of his family in second class Railway fare. Therefore, it was contended the workman should be given Leave Travel Concession once a year so that he could visit his native place. This concession according to the Federation was twice belessed. It kept the workmen healthy and cheerful and there by improved the efficiency of the workman and consequently that of the company.

Demand No. 8 REIMBURSEMENT OF MEDICAL EXPENSES: It related reimbursement of medical expenses. It was stated that the company was giving 7% of total basic wages + DCA + personal pay by way medical reimbursement. The workman getting the maximum pay would get Rs.4,600/- approximately per year. It was said that workman should be given 15% of total salary.

Demand No. 9 EDUCATION ALLOWANCE : It is stated that education allowance has become necessary because it has become expensive these days. The lack of good institutions of education nearer home, the increase of fees in the school and colleges, the system of capitation fee and not least the cost of text books have made the education of children of the workmen a very costly affair. It is in the interests of the workman as well as the company that of burden of education of children should be shared by the company.

Demand No. 10 REIMBURSEMENT OF EXPENSES ON PERIODICALS, NEWS PAPERS ETC. : It is claimed that demand to maximum extent of Rs.2,000/- per year for workmen for reimbursement towards periodicals News papers is not exhorbitant.

Demand No. 11 REIMBURSEMENT OF EXPENSES FOR MEDICAL CHECKUP : It is pleaded that company should reimburse a workman the amount spent by him on himself and depends for medical check up. It is stated that as per circular dated 10-8-1992 (annexed as schedule V) other employees were granted this facility. The federation relied on that document.

Demand No. 12 HEALTH INSURANCE SCHEME : This demand relates to inclusion of the children of the workman in the Health Insurance Scheme. It was stated that the workman and his spouse were covered by the scheme.

Demand No. 13 LEAVE BENEFITS: This demand related to leave benefits.

(a) Casual leave was being given 12 days. It was claimed that it should be 15 days per year. It was claimed that the demand was justified.

(b) Privilege leave: The demand of the Federation was to the effect that privilege leave should be 30 days annually uniformly applicable to all workmen instead of the prevailing system of granting the aforesaid leave 24 days annually to those workmen who had served the company 7 years or less and 27 days annually to those who had served company for more than 7 days. It was pleaded that demand was justified because all other concerns comparable to the company granted similar leave. Sick leave: The demand was that workman should be granted sick leave for 20 days annually without any ceiling; instead of 8 days annually subject to ceiling 150 days during entire service period. The demand was justified that eight days are not sufficient for recuperation in case of serious illness.

Demand No. 14 ACCUMULATION OF LEAVE : It relates to accumulation of privilege leave in the account of each workmen so that he could meet obligations imposed upon him by ups and downs of individual life. It is asserted that the workmen suffer monetarily when they absent themselves for more than period of privilege leave allotted to them for a year.

Demand No. 15 ENCASHMENT OF LEAVE : It was stated that workmen should be allowed to encash the leave which they accumulate as a benefit when they quit the job.

Demand No. 16 GRATUITY: The claim for gratuity was payment of salary of 60 days. It was alleged that the company was giving 15 days wage as envisaged by the Payment of Gratuity Act. The contention was this was the minimum fixed by statute for every employer. However, the company paid to Officers, Executives etc. Thirty days salary which comes to 40% of gratuity paid to the Officer. It was submitted that company was in a position to bear the additional burden as it reserves were standing at Rs. 41.23 crores.

Demand No. 17 PENSION SCHEME: It related to formulation of pension scheme in consultation with the Federation.

Demand No. 18 DEATH-CUM-RETIREMENT BENEFITS : It was claimed that each workman should be paid Rs. 1,00,000.00 at times he retires or dies in harness. It was stated that company had no such scheme of its own except that which was imposed upon it by the statute.

Demand No. 19 RETIREMENT AGE : It was claimed that age of retirement should be raised to 65 years instead of 58 years The longevity of average Indian had increased and it was pleaded that almost all the industries had increased the age of retirement by 2 to 4 years.

Demand No. 20 RECRUITMENT : The Federation claimed that there should be scheme for giving employment to the dependents of the workmen as was done in case of persons occupying higher echelons of the company. The customary privilege of the employer to give jobs to the dependents of workmen at his sweet will was likely to be employed to the detriment of the unity of workmen.

Demand No. 21 PERMANENTING OF TEMPORARY WORKMEN : It related to making temporary workmen as permanent. The grievance appeared to be that the temporary workers were fired at will and then another set of workers was employed after three months. The Federation wanted end to this unhealthy practice. Further, it was pleaded that the company in fact employed certain workmen for the running its business like drivers of Motor cars, jeeps etc. but showed them as the private employees of the concerned official. The concerned official was reimbursed by a suitable allowance for all the expense incurred by him in running the vehicle. The federation wanted the tribunal to lift the veil and give suitable reliefs to the drivers. It was pleaded that the company used to employ mechanics and other personnel for rendering services to customers. This system was being given a go by in the guise of employing contract labour system of Bajaj spares and Services dealers. The workmen submitted that this devices of providing service through Bajaj Spares and Services Dealers was device to abolish permanent posts of Mechanics and other service personnel who were serving the company from the very inception as the company adopted a customer service policy in respect of its products. It was further pleaded that company that work of sweeping and maintaining cleanliness of the establishment of the company was not done by the company but through contract. This was done by the company in order to avoid minimum wages and benefits conferred by the law to an workman of the company even though the work was of perennial nature. Same method was adopted for the purpose of canteens attached to the establishments by handing over their running to another employer . The request was to award permanent absorption of the canteen boys.

Demand No. 22 ABOLITION OF C & F ARRANGEMENT: It is alleged that the employment of carting and Forwarding Agents for carrying out the operators incidental to business of marketing electrical goods is a sham and bogus arrangement. The so called carting and Forwarding agents do the work of the company and some of them do nothing else but do the work of the company only like at the Coimbatore and Cochin branches. It is urged that this work is of perennial nature, and therefore, the company should employ the workman. The exploitation of the workmen by the middlemen should go.

Demand No. 23 TRANSFER OF UNION MEMBERS : It is argued that the transfer of a workman to another destination should be done with the consultation of the Union. It is urged that this consultation does not seek to take away the right of employer to transfer but ensures that transfers are made bonafide and the point of view of the workmen is brought to the notice of the superior authorities of the companies.

Demand No. 24 TRADE UNION FACILITIES : This demand relates to Trade Union facilities. It is stated that the prior to 1993, the company was reimbursing the daily expenses of the office bearers of the Federation, incurred by them during the visits to various branches, telephone expenses and cost of stationery and printing. The Federation wanted that these facilities be provided to the members of Federation openly under a Settlement or award as was done by the comparable companies.

Demand No. 25 REPRESENTATION OF WORKMEN ON THE BOARD OF TRUSTEES OF THE PROVIDENT FUND TRUST : It relates to representation of workmen on the Board of Trustees of Provident Fund trust by way election from without any restriction to plea of his posting. The existing system permitted election of the members stationed at Mumbai.

Demand No. 26 RECOVERY OF MONETARY BENEFITS PAID TO EMPLOYEES NOT COVERED BY THIS SETTLEMENT: It is apparently directed against the practice of the company to give monetary benefits and declare that the persons doing the same job as workmen have ceased to be workmen. This method is employed requiring them from resign from the trade unions and thereby reduce the scope of bonafide, trade union activities. The monetary benefits paid to the workman amounted unfair trade practice.

Demand NO. 27 PERSONAL PAY : The demand was for personal pay to workmen other than those working at Mumbai, Delhi and Calcutta who were being paid Rs.225/-, Rs.200/- and Rs.200/- respectively. It is alleged that non payment of personal pay at other stations is discriminatory and arbitrary.

Demand No.28 REIMBURSEMENT OF PETROL EXPENSES AND MAINTENANCNE EXPENSES : This demand related to reimbursement of Petrol expenses and the expenses for maintenance of private vehicles of the workmen. The basis for such a demand was that the Officers, Executives and Managers were reimbursed for the same expenses.

Demand No. 29 LOAN BENEFITS : The Federation demand interest free bonus under three categories:

(i) Personal Loan: In order to meet unforeseen difficulties to workmen or the members of family there was demand for loan of this nature. It was pleaded that the inflationary tendencies and high cost of living did not give any respite even if the wages were to be hiked. The workman could hardly save any money.

(ii) Vehicle Money: The claim was that the workmen could not take accommodation in the vicinity of establishment of the company. The vehicle loan was claimed to an answer to the problem of commutation.

(iii) Housing Loan: It was pleaded that the value of real estate was steadily rising. Therefore, an interest free loan of Rs. 2 lakhs for housing and Rs.50,000/- for repair and maintenance of the available house belonging to the workman was demanded. It was pleaded that company could bear the expense.

Demand No. 30 DRIVERS ALLOWANCE : The demand relates to enhancement of drivers allowances from Rs.50/- to Rs.500/- per month as they are required to work one hour extra everyday. According to the statement of claim the demand is commensurate with the over time allowance paid to workers as per local laws of the State where the branches are situated.

Demand No. 31 OUT FIT ALLOWANCE : The Federation says that the company should pay allowance so that the workmen appear to be well dressed to the outer world. It is said that this gesture on the part of the company is likely to boost its image.

Demand No. 32 PAID HOLIDAYS : relates to paid holidays. It is claimed that the business of the company grew because the workmen have performed additional amount of work. The company may in response increase the paid holidays.

Demand No.33: This demand relates to classification of workmen in accordance with duties allotted to them so that they clearly know if they are covered by the Act as workmen. It is alleged that the company has lured certain workmen to accept the designation of Officers without changing the nature of their duties with a view denying them the statutory benefits.

It was pointed out in the Statement of claim that the company had unilaterally increased the House Rent allowance of the workmen of Mumbai without negotiating it with the Federation. It is asserted that Federation is the recognized sole bargaining agent of all the workmen of the company.

6. The workmen pleaded further M/s.Philips India Limited and M/s. Crompton Greaves Limited were the comparable concerns whose over all performance is akin to that of the company. The workmen further pleaded that the turn over net profits, the reserves and other financial data in relation to the paid up capital of the company heavily leaned in favour of the company. The Federation under took to file the comparative figures of capital structure, turnovers, net profit reserve funds etc. of the comparable firms for supporting its demands.

7. The statement of claim was drafted and verified on 17th August 1997. It is obvious that it dealt with the situation as it existed then.

8. The company filed its written statement and it took certain fanciful objections which were not pressed seriously before this tribunal. It was alleged that

(i) The Federation had suppressed material facts. The reference was liable to be rejected on this short grounds.

(ii) It was further pleaded that the Federation had deliberately twisted the facts of the case and in order to get certain relief, it has not dealt with basic fundamental principles of region-cum-industry total financial burden, arising out of such demands. **On this ground also the above reference which does not deal with any 'issue' of National Importance deserves to be dismissed in limine with order as to costs.**

9. The company stated further in its written statement that it is public limited company. It has its registered office at

Mumbai and various establishment through out India as per Exhibit 1 to the written statement. It was not disputed that the company was engaged in marketing electrical goods like lighting products, Domestic appliances and Fans. The allegation of the Federation that company took electrical contract jobs of large Industrial Projects on Turn key basis appears to have not been disputed. Nor was the statement that company collaborated with the companies of USA was denied. It was alleged that in the establishments of the company there were independent Unions registered under the Trade Unions Act 1926. In the 1974, the Unions formed the Federation which was contesting this reference. It bears registration No.7054 dated 6/12/1975 and its register office at Mazdoor Karyalaya Congress House, Mumbai. It was alleged that the Federation was not recognized as the Apex body by the constituent Unions and did not authorize it to deal with the company as if was sole bargaining agent. This assertion according to company followed from the Minutes of agreement dated 16/5/1979. It was asserted that the clause's of the agreement that the settlement shall be entered into between the management of the local branch and the respective local union duly registered with the local authorities in accordance with law. It was submitted that pursuant to clause 3 of the said agreement regular settlements in accordance with clause (p) read with section 18(1) of the Act were signed between the management and the respective unions at the Branches which were duly registered in accordance with law. It was further asserted that all subsequent settlements were signed with the local unions and the company and consequently, the Federation had no locus, standi to espouse the case of the workman category of the employees of the company. It was pointed out that the Mumbai Branch Office at Reay Road had a Union by name Bombay General Employees' Union. It withdrew its association with the Federation. Subsequently, the local union at Wardha had done so. It is named as Bajaj Electrical Employees Union, Wardha. It appears from the tabulation in paragraph G that the company stated that there were locally registered unions except at Calcutta, Coimbatore, and Raipur. It was asserted that only 13 union were associated with the Federation as given in the tabulation. It was asserted that total number of workmen associated with the Federation was 121 and number of workmen in association with the union at Mumbai was 32. It was pointed out that out of the 845 employees of the company, 688 employees did not form the category of workman. It was submitted that the individual unions had submitted their own charter of demands. Some of them had raised industrial disputes before the Conciliation Officers located at the head office of the branch. The company filed the various notices as Exhibit 3 in respect of Bhuvabneshwar, Chandigarh, Delhi and Bangalore as (Exhibit 3 collectively) and letter of the Union at Jaipur Branch to Conciliation Officer/Commissioner Labour (Exhibit 4).

10. It was pleaded that at the branch offices of the company at Calcutta, Cochin and Coimbatore, there were not unions of workmen. The Federation was in control of 13 Unions and number of workmen was 121. It was pleaded that workmen who were categorized themselves, as staff employees, employed at Mumbai, organized themselves as Bombay General Employees Association and got themselves registered as such. They had raised a separate charter of demands. It resulted in settlement dated 29-1-96. (Exhibit 5). Further, it was stated that Wardha Union too signed the similar settlement dated 15-4-1996. It was further in paragraph J that as per Exhibit 2 attached to the written statement the demand of the 121 workmen would cost it 10.31 crores per annum. It was stated that company earned profit to the tune of Rs. 5.07 crores. Thus demand of the Federation was exorbitant.

11. The company replied to each and every demand.

Reply to Demand No. 1 : It was asserted as per definition of wages under the Act the tribunal should view as whole. The components of wage so far as the company was concerned included the following components.

(a) Basic Pay

(b) Stagnation increment paid as Special pay.

(c) Dearness Compensatory Allowance.

(d) Fixed Other Allowance (Special Allowance is included in this).

(e) Personal pay.

(f) Fixed House Rent Allowance

(g) Fixed Conveyance Allowance

(h) Fixed Medical Allowance @ 7% of Basic Pay + DCA + Special Pay + Personal Pay (wherever applicable).

(i) Fixed Leave Travel Allowance (LTA) @ 6% Basic + DCA + Special Pay + Personal Pay (wherever applicable).

It was submitted that the total wages given to lowest category of employees and largest category of employees was being given in respect of 13 Unions.

Delhi	
Peon-I	4659.00
Commercial Assistant	7901.00
Delhi-II	
Mechanic	5939.00
Mechanic-I	7575.00
Lucknow	
Peon	3400.00
Commercial Assistant	6306.00

Chennai	
Peon-Packer I	7158.00
Driver	8614.00
Indore	
Driver-cum-Peon	3971.00
Mechanic-I	7128.00
Guwahati	
Driver-cum-Peon	4548.00
Mechanic-I	5981.00
Patna	
Driver-cum-Peon	4202.00
Commercial Assistant	6360.00
Hyderabad	
Peon	6785.00
Commercial Assistant	8314.00
Jaipur	
Peon-Packer	5900.00
Commercial Assistant	6734.00
Chandigarh	
Driver-cum-Peon	4477.00
Commercial Assistant	7963.00
Bangalore	
Packer	5093.00
Commercial Assistant	9283.00
Ahmedabad	
Sub-Clerk	3793.00
Commercial Assistant	7278.00
Bhuvaneshwar	
Sub-Clerk	5450.00
Commercial Assistant	7130.00
Pune	
General Clerk	5840.00
General Clerk	6236.00
Raipur	
Peon	4414.00
Sr. Clerk	7626.00

It was pleaded that in addition to above the workmen eligible for 12% PF, 20% Bonus/Exgratia. It was thus disputed that pay scale of the workmen needed revision. It was also stated that "claim for revision of pay scale from 1-1-1996 was unheard of the industrial jurisprudence". The entire claim on that court deserved to be rejected. It was further submitted that demand of workman to be placed at par with the workmen of Philips India Ltd. and Crompton Greaves Ltd. at Ahmedabad should not be accepted. It was claimed that the workmen should have the comparative statement of Khaitan (India) Ltd., Sirya Rabhir Ltd. and Pollar Industries Ltd. following the region cum Industry formula. It was denied that company had unilaterally reduced the pay scale. The contention was that basic pay grade scale was revised by a settlement dated 19-4-1984. There was no reduction in the pay of existing staff. It became operative from the date of settlement to new incumbent. The emphasis was on Region-cum-industry formula in the written statement and for this reason it was alleged the demand was liable to be rejected.

Reply to Demand No. 2 : It was that the fitment allowance was not routine demand. It was attempt to get an enhancement of pay in the basic wages/basic pay in a clandestine manner.

Reply to Demand No. 3 : It was stated that company had no comment to offer.

Reply to Demand No. 4 : It was stated that upgradation of the employees as claimed by the Federation would result in loss to the company. The claim for automatic promotion without regard to consideration of merits, capabilities, potential, efficiency and productivity of the workmen was highly detrimental to the interests of the company. It deserved to be rejected.

Reply to Demand No. 5 : The demand appears to one amongst several real lines of contention. It was therefore, hotly disputed that the principle that Dearness Compensatory allowance should not be based upon the Consumer Price Index number published by Labour Bureau Simla. It was stated that this principle was accepted by the Supreme Court and therefore, the attempted justification of the demand by the Federation, struck at very root of established principle of law when it says that tribunal need not be guided by cost of living index. It was further stated the company followed the following Dearness Compensatory Allowance formula uniformly to all its 'union category' employees in all its establishment.

(a) All Union category employees are eligible for Dearness Compensatory Allowance.

(b) An Union category employee whose basic pay is less than Rs. 100/- per month is paid Dearness Compensatory Allowance equivalent to an union category employee whose basic pay is Rs. 100/- per month.

(c) Dearness Compensatory Allowance (DCA) is paid on the basis of the Consumer Price Index

Number 1949 series for the City/Town concerned where the Branch/Office of the employees is situated. This CPI number is the one published by the Government of India, Labour Bureau, Simla. But the base year for Dearness Compensatory Allowance for the Company is 1957-58 and therefore, the average Consumer Price Index Number for the year 1957-58 for Staff (Grade 7-year is 1963-64) as published by the Simla Labour Bureau for the City/Town as aforesaid is deducted from the Consumer Price Index Number of the 1949 series for that City/Town.

(d) DCA is paid as per the formula given below :

Basic	DCA Based on CPI No. 1949 Series for the Concerned City Town.
Upto Rs. 100 p.m.	For every Rs. 100 Basic pay, Rs. 1.25p per point rise over Average CPI for year 1957-58.
For the second Rs. 100 per month	Rs. 0.50P per point rise over Average CPI for the year 1957-58.
For the third Rs. 100 per month	Rs. 0.25P per point rise over Average CPI for the year 1957-58.
For the fourth Rs. 100 per month	Rs. 0.25 P per point rise over Average CPI for the year 1957-58.
Over Rs. 400 PM.	DCA is as applicable for Rs. 400 per months Basic Pay
Where Basic Pay is A fraction of the 2nd 3rd or 4th Hundred DCA is calculated On the basis of the Fraction of the Hundered concerned.	Fg: For Rs. 150/- Basic Pay DCA= Rs. 1.25 × CPI + 0.50/2x CPI = Rs. 1.50 × CPI For Rs. 250 Basic Pay DCA = Rs. 1.25 × CPI + Rs. 0.50 × CPI + Rs. 0.25/2 × CPI = Rs. 1,875 × CPI For Rs. 400 Basic Pay DCA = Rs. 1.25 × CPI + Rs. 0.50 × CPI + Rs. 0.25 × CPI = Rs. 2.25 × CPI.

Hence the contention of the Federation that the basic pay beyond Rs. 400 the Dearness Compensatory Allowance is absent and denied to the workman is baseless and false. In fact the DCA at Rs. 400/- Basic Pay and above is Rs. 2.25 per CPI Point rise. It is denied that there is no payment of Dearness Compensatory Allowance to a workman drawing a basic pay of Rs. 400/- or more. It is a well accepted principle and practice by industries and accepted by Courts that there can be a limiting level on basic salary beyond which Dearness Allowance applicable is the same for any higher basic salary.

In view of the above, the demand of the Federation with regard to Dearness Compensatory Allowance is unjustified.

Reply to Demand No. 6 : It was submitted in the written statement that demand of the Federation for House Rent allowance on par with Presidents Vice Presidents, Senior General Manager, General Manager Executive etc. was unjustified. The classification of scales of pay of higher categories than the workman are usually different. So also the other benefits including the House Rent allowance are dependent upon the status of an employee in the the company. It is alleged that the House Rent allowance paid to the workman was higher than the statutory enactment in same states of the country. It was claimed that demand of the workman was exorbitant and unjustified.

Reply to Demand No. 7 : It was alleged that the Demand of Leave Travel Concession was absolutely unjustified as the Leave Travel Allowance was already in existence.

Reply to Demand No. 8 : It was alleged that at present the workmen were entitled to day to day expenses for ordinary illness not requiring hospitalization. It was claimed that so far as hospitalization was concerned the workman and his spouse were covered by Medi claim Policy of Rs. 20,000/- each. In view of the aforesaid arrangement there was no need for giving an award on the demand.

Reply to Demand No. 9 : It was stated that there was no case for grant of education allowance as the problem arose on account of the National policy. The workmen could not claim solution to their problem at the cost of the company.

Reply to Demand No. 10 and 11: In a common reply it was asserted that workman cannot claim benefits for reimbursement of periodicals and expenses of medical check up merely because the employees of the higher categories were getting those benefits. It was further pleaded since the company was a marketing company, the workmen were not required to perform hazardous job. Most of them were doing desk job. It was claimed that the workmen were not so poor as painted in the statement of claim. They were owners of vehicles like scooters, Motor Cycles and cars. The demand No. 28 illustrated the above assertion. It was denied that the financial burden in fulfilling demand would be insignificant.

Reply to Demand No. 12 : The company did not make any comment.

Reply to Demand No. 13 :

(a) The company combated the demand for increase in number of days for casual leave by asserting that other companies followed the same practice.

(b) It was asserted that uniformity in grant of privilege leave was not proper. It was asserted that upto 280 days accumulation was permitted. It was higher than in other comparable organizations.

(c) It was asserted that sick leave facility of the company was higher than that in the other organizations comparable to the company.

Reply to Demand No. 14 : No reply was given to demand for accumulation of leave.

Reply to Demand No. 15 : It was contended the workmen want privilege leave to be increased under the guise of necessary rest and recuperation and at the same time puts money value to the unavailed leave. The workmen shall not be utilizing the leave for rest and recuperation if they are entitled to get cash instead for not taking leave. Then how could grant of leave be more productive as asserted by the workmen. It is argued that if this demand is granted then the workmen would prefer to go on leave without pay or remain habitually absent rendering them liable to disciplinary action. Thus this demand is unreasonable.

Reply to Demand No. 16 : It is alleged that the company was paying gratuity as per payment of gratuity Act 1972. The demand for gratuity on par with superior officers and functionaries of company was unjustified. The higher authorities of the company were having different status and position in the hierarchy of the organization. There was no question of discrimination. It was denied that the company had capacity to deal with the additional financial burden.

Reply to Demand No. 17 : The demand for grant of pension was demurred on the ground of incapacity to pay on the principle of region-cum-industry. The capacity to bear on the additional financial burden on the part of the company was negatived. It was urged that employees Pension Scheme incorporated by the Central Govt. in 1995 under Employees Provident Fund Act should be held to have met the requirement of the workmen.

Reply to Demand No. 18 : It was stated that this demand did not take into consideration the principle of region cum industry. It was denied that any comparable company had granted the benefit claimed. It was denied that company had the capacity to meet the additional burden.

Reply to Demand No. 19 : It was asserted that it was inadvisable and contrary to provisions of law of claim increase in the age of retirement.

Reply to Demand No. 20 : It was contended that recruitment is the prerogative of the management in the interest of the company. The company is responsible to stock holders for its gains and development. It was stated that demand of workmen to recruit one dependent son or daughter was unreasonable. The company denied that it misused this prerogative to oblige its favoured employees. It is interesting to note that company for first time remembered the 'poor stock holder for the first time while replying to this simple demand.'

Reply to Demand No. 21 : The demand for making a system of temporary workmen permanent evoked a combative reply on the part of company. It was hotly disputed that company was in the habit of exploiting labour by employing a group of labourers for three months and discharging them in favour of employing group for three months. It was said that there was always need for recruitment of temporary employees. This is done to fill up the leave vacancies. It was stated that statute permitted the company to adopt this strategy. It was asserted that if all the temporary workmen were to be taken up as permanent workmen then the company would suffer with surplus of workmen. It was further denied that drives are engaged for the work of company. It was stated that the driver is engaged by the Manager for driving the car utilized by the Manager. The driver is employed by the Manager. It was further submitted that Bajaj Spares and Services Dealers are separate establishment. They provided after sales, service to the customers during the warranty period and thereafter. There is no employer and employee relationship between the employees of aforesaid sales service and the company. It was said that if that arrangement was shown then it would be proper for the Federation to approach the authorities under the Contract Labour Regulation and Abolition Act, 1970 rather than the Tribunal. It was denied that sweepers and the tea boys could be said to be the employees of the company. They were self employed people. They are engaged on contract and the terms of the engagement included the cost of material. It was stated that Federation had no **locus standi** to take demands on behalf of the persons employed on contract. It was denied that the canteen facility was given to the workmen as a long established practice. It was arrested that the establishments of the company are covered by Shops and Establishment Act. There was no express condition in those Acts that the employer shall maintain a canteen. It was denied that Sweepers and the tea boys were employed on contract with view to avoid application of labour laws.

Reply to Demand No. 22 : It was alleged that system of carting and Forwarding Agents was existing practically in all Consumer Product Companies. These agents store and stock the products and transport them for delivery to customers. They enter into contract with for rendering them services. Such agents may have other contracts with other industrial organizations. The employees of these agents were not the employees of this company. The company did not pay them. The plea was if there was violation of Contract and Labour Abolition Act 1970, the remedy lay elsewhere. The allegation regarding the malpractices in establishment of company at Cochin and Coimbatore was refused.

Reply to Demand No. 23 : It was denied that company indulged in the malpractice of transferring the members of the Union with ulterior motive. It was alleged that company being a marketing company, its officers and establishments

were spread all over country. It was the service condition of each employee that he may be transferred from one place to another. Therefore, the demand that federation should be consulted implied that company transferred the workmen by way of punishment. It was denied at more than one place that the company acted **malafide** It was pleaded that in similar situation other comparable organizations this right was exercised without any influence. The demand should be rejected in toto.

Reply to Demand No. 24 : This demand too for making provisions for stationery and reimbursement of travel expenses incurred in the travelling to other branches of company on the part of office bearer was denied. It was asserted subscriptions of the members and separate unions should be sufficient for that purpose. It was denied that prior to the election the company was financing the previous union in a clandestine manner.

Reply to Demand No. 25 : It was urged that the present practice of representation to Board of Trustees was on the basis of understanding of 1979 with the Federation. It appears that the plea of the company was that it was too late in the day to call practice as undemocratic. The demand therefore, should be rejected.

Reply to Demand No. 26 : This demand for stopping of monetary benefits too was denied on behalf of the company. It was stated that workman should not claim the monetary benefits given to category of Senior Manager, Managers, Executive and Officers etc. They are class apart. It was denied that company was luring the workmen by its dubious methods of promoting the workmen to the rank above so as to declassify them from the rank of workers. It was stated the trade union was scuttling the promotional avenues to its workmen by raising such demand.

Reply to Demand No. 27 : It was denied that personal pay was being given to workmen of Mumbai, Calcutta and Delhi only. It was claimed the company had implemented the settlement of 1975 entered into with the Federation. This settlement of 1975 was different than the Dearness Compensatory allowance. It neither discriminatory nor amounted to unfair labour practice. The demand No. 27(b) was unreasonable and was liable to be rejected.

Reply to Demand No. 28 : It was pleaded that the workmen cannot claim reimbursement of expenses on patrol and maintenance of their private vehicles on the ground that similar perquisites given to Officers of the company. Such demand should be rejected as such. The Officers had a different status. They cannot be equated with workmen. The nature of their jobs, position, qualifications, experience and capabilities call for a different approach for payment of their emoluments. Therefore, this absurd and exhoribitant demand should be rejected.

Reply to Demand No. 29 : It was denied that it was right of an employee to loan. The loans are given by the loaner at his discretion. The workman can avail the facility of loan from other financial institution like HDFC, LIC housing Finance Ltd. or Banks. The burden cannot be borne by the company as it is not in the business of giving loans. The demand is unjustified.

Reply to Demand No. 30 : The demand for over time for driver was also not accepted. It was pleaded that the Fifth Pay Commission had recommended abolition of overtime allowance.

Reply to Demand No. 31 : It was stated that there would be high and unsur-mountable burden shall be placed upon the company if the demand for out fit were to be accepted. It was pleaded that the workmen whose clothes were soiled by the nature of their work were given the facility of uniform every year. They also get a free wash. The desk workers like clerk did not need any uniform. The other industries do not give uniform to their salaried employees.

Reply to Demand No.32: It was pleaded that company gave more holidays than other comparable companies. There was no justification for this demand.

Reply to Demand No.33: It was refuted by stating the Federation was interfering with the right to govern the business of the company by making that demand. It could not claim right of demotion of officers on the allegation that they were performing the same function as Clerks, Typists, Steno Typists and stenographers. It was denied that company simply changed their designations by changing the nomenclature. It was denied that company entered into dubious practice.

The company specifically denied the allegations in paragraph 2 at page 26 of the Statement of claim. It was stated that HRA was increased under a settlement Bombay General Employees Association. It was denied that Federation was the sole bargaining Agent. All other allegations were denied. It was stated that claim of the workman deserved to be rejected.

13. The Federation filed its rejoinder. In the rejoinder it was contended that the industrial dispute between the company and its workmen stationed at the various parts of the country was a common dispute to its constituents. The demand for wage rise and improvement of general conditions of service for which the demand was made by the Federation could be decided by a single reference as to National Tribunal under the provisions of the Act. For this purpose, the Federation chose to move the Chief Labour Commissioner (Central). He failed to take any action. Thereupon, the Federation moved the High Court of Gujrat. The High Court of Gujrat (it appears from the context that it must be a learned Single Judge of that Court) Directed the Chief Labour Commissioner to conciliate. It was urged that the company had appeared and had vehemently opposed the writ petition. It was stated that the company did not take any stand stating that Federation had suppressed material facts in the writ petition. It was further urged that the company filed a Letters Patent appeal. Even before the Division Bench the

assertion regarding the suppression of facts was never made. It was thus stated that there was previous litigation in the High Court before the Federation could raise the common dispute for all establishment before a single conciliation officer. The reference thus required the award of the National Tribunal. It was denied that this tribunal could not adjudicate upon the matter merely because the company said their demands were exorbitant or the award shall have far reaching repercussions in the future. In the rejoinder the Federation took a definite stand. It relied Exhibit A dated 19-4-1984 Exhibit B dated 22-24-3-1995 Settlement dated 29-8-1985. It was submitted that it was the practice of the company to sign settlements with the Federation. It was the Federation that was negotiating and signing settlements relating to service condition of the workmen through out the Country. It was settlement of the Federation which was reiterated by different branch units of the company at its instance. It was asserted that reiteration was not necessary. The company wanted reiteration in order to doubly sure. It was stated that in the year 1993 there were elections. The old body of the Federation, which operated from Bombay was routed in the election. The change in office required shifting of head quarters from Mumbai to Ahmedabad. The Superiors Officer in the company did not like that change of the office bearers of the company. They tried to dislodge the Federation from 1993 onwards and persuaded the Mumbai union to sever the connections with the Federation through their own henchmen. The averments made by the company in paragraph E were denied. It was asserted that it was with a view to weaken the Federation the Mumbai union was perssuaded to withdraw itself. However, the attempt of the company to make Federation to captive organization was resisted by all other Constituent units. Thereupon, the superior Authorities of the company were reacting with vengeance against the Federation. It is made known that wage rise and improvement in conditions of service would offered to those units who sever their connections with the Federation. It was claimed that clause No.3 of the Minutes of agreements relied upon by the company supports the case of the Federation that it is the Apex body Federation and the individual settlements of constituents reiterating the settlement made by the company were made with a view to satisfy the local laws which required registration of settlements under them. It was further submitted that alleged withdrawal of the association by certain unions was creation of the company and it amounted to unfair labour practice. The federation disputed the details of Head Officer and Branch offices at Serial No. 1 to 8. It was stated that number of workers shown in the column No.3 of the Statement showed current situation at the time of filing the written statement but did not disclose the same as it existed at the time of making the charter of demand. It was submitted that the address in the office at serial NO.6 to 8 were irrelevant. It was pointed out that even the company admitted that Federation was accepted as the apex body by local union from serial No.9 to 23. Thus at least fifteen local unions regarded the Federation as the apex body. It was submitted that so far as Calcutta, Cochin and Coimbatore were concerned it was stated that company had stifled the labourer under the guise of C and F Agencies and introduced contract labour system. It was denied that the employer had to suffer a heavy financial burden and did not admit the estimate given by the company in Exhibit 2 attached to the written statement. It was stated the exhibits filed along with the written statement were irrelevant for determination of the industrial dispute and denied that individual unions were separate legal entities. It was reiterated that Mumbai union was working under the influence of the higher Officers of the company and its settlement was without the concurrence or consent of the Federation. The federation is not bound by it. It appears that in rejoinder every allegation regarding each demand was refuted. After going through the rejoinder in respect demand, this tribunal is of the view that it is not necessary to refer to the paragraphs in the rejoinder dealing with the allegations against the statements made in the statement of claim. Most of the rejoinder is argumentative in rebuttal of the stand of company in the written statement. No new facts are pleaded. This tribunal with deal with the justification, denial and rejustification when it deal with each demands on merits.

Before we embark upon the merits of the claim of the Federation, it would be proper to consider the preliminary points arising in this reference. It may be stated at the outset that the company did not press these points taken up by it in statement of claim that reference should be rejected on the ground that the Federation had suppressed or twisted material facts requiring this tribunal to reject the reference on this short ground. It is obvious that when company had not pressed and brought to notice of this tribunal any fact requiring it to reject the reference, then the question does not arise. It has been stated in the written statement that questions involved in the reference cannot be said to be of national importance. Therefore, also this tribunal did not have any jurisdiction to decide the dispute. It may be noted that power to refer the dispute is conferred by sub section (1A) of section 10 of the Act. A notification issued under sub section (1A) of section 10 of the Act. A notification issued under sub section 1 of section 7B of the Act confers powers upon a National Tribunal to adjudicate upon the disputes which in the opinion of the Central Govt. **involve questions of national importance or are of such nature that industrial establishments situated in more than one are likely to be interested in** Sub section (IA) of section 10 employs identical language (as is printed in bold letters above) It confers powers upon the Central Govt. to refer to the dispute to National Tribunal and employs identical language. The word "or" is disjunctive. It is not in dispute that establishments of the company are spread over in several states. Therefore, the questions framed in respect

33 charter of demand by the Federation for and on behalf of the unions of the establishments spread over through out India and covered by section 10 (1A) of the Act as well as section 7B of the Act. Moreover, it has been pointed out to this tribunal that the reference came into being on account of the operation of order of the Gujarat High Court in special Civil Application No.5496 of 1996 between All India Bajaj Electricals Employees Federation vs. Chief Labour Commissioner (henceforth writ petition) decided on 4/12/96. In that writ petition Union of India was respondent No.2 and the company the respondent No.3. It had raised the question that matter could not be referred to as the matter was not of national importance. The learned single judge (Mr. Justice J.N. Bhatt) made the following directions in that case.

"In the result the respondent No.1 Chief Labour Commissioner (Central) is hereby directed to intervene by Starting conciliation proceedings and conclude the same expeditiously either by recording a statement or by submitting a failure port to respondent No. 2 Union of India with in a Period of four week from the date of receipt of the writ. In the event of submission of failure report to respondent No.2, Union of India, the respondent No.2 shall take a decision under section 10 (1A) read with section 7B of the I.D. Act in accordance with law as early as possible but not later than six weeks from the date of receipt of failure report".

A perusal of that order in the writ petition shows that his lordship Justice J. N. Bhatt of Gujarat High Court had considered the points in great detail. In view of this matter since this dispute was between the Federation and the company in respect of same industrial dispute, the principles of resjudicate are clearly attracted. In any case this tribunal has no power to sit in judgement over the decision of the High Court of Gujarat. The remedy of the company was file an appeal, which according to Federation it did, but the Division bench dismissed the appeal. The company has not placed the order passed in appeal. It is reasonable to hold that the order dated 04-12-1996 in special civil application No. 5496 of 1996 holds the field.

15. This takes us to next contention that Federation has no *locus standi* to raise the dispute and the represent individual unions. It was stated by the Federation that it was the apex body of the unions and it had an authority to represent the unions. The company has disputed the claim of the Federation that it had recognized the Federations to settle the dispute on behalf of the Union. After the negotiations, it was the individual unions that signed the agreement at respective places of their establishment at their offices. It is contended therefore, the contention of the Federation has to be rejected.

16. It appears to this tribunal that in writ petition following facts were highlighted as admitted.

(i) "There are 20 branches through out the country employing about 170 employees".

(ii) The Petitioner federation has 13 different unions which are having in 13 states.

(iii) The petitioner federation is registered under the Indian Trade Unions Act 1926.

(iv) The petitioner federation is recognized for the purpose of settling industrial disputes regarding wages and other several conditions.

(v) The last settlement was signed by the federation with the employer on 28-6-1992.

(vi) The said settlement was adopted in toto by State unions like that affiliated before the State Government labour authorities. That such method of recording settlement is being followed since 1975.

(vii) That one of the establishments of the respondent company is located in Ahmedabad with establishment of about 20 employees.

(viii) The petition federation is now operating from Ahmedabad, the President, the General Secretary and the Treasurers of the Petitioner federation are residing at Ahmedabad.

In view of the case of the Federation before the High Court that it represented 13 different Unions in 13 states, it cannot say that it represented more Unions. This fact was not disputed by the company then it can also not say otherwise. The company is also bound to admit before this tribunal too that it had recognized the federation for the purpose of settling the industrial disputes regarding the wages and other service conditions. It cannot go behind this order because it is bound by it particularly when appeal against the order dated 4-12-1996 was dismissed. It had also admitted the modus operandi of entering into settlement in paragraph 4 and 5. Therefore the company cannot argue to contrary to the facts admitted by it before the Gujarat High Court. Nor can this tribunal ignore those admitted facts for the purpose of the grant award in these proceedings. The admitted facts in the writ petition cannot be reopened by the company. It did not raise an objection because there appears to be truth in version of the Federation. This tribunal has already demonstrated earlier that reference owed its origin to the writ petition. When the company admitted in the High Court that it had recognized the Federation then it cannot turn around to say that it does not recognize the Federation before this tribunal. It is bound by the statement made before the High Court. In any case this tribunal cannot go behind the order dated 4-12-1996 and give a fresh finding on the point. Thus, the tribunal holds for purpose of this reference that the company had recognized the Federation as the sole bargaining agent of the 13 Unions affiliated to it. This tribunal holds that on the basis of undisputed facts, oral and documentary evidence on record that the Federation started to

negotiate settlements on behalf of the affiliated unions since 1975 and the last settlement that the Federation negotiation behalf of the Union was in the year 1992. It is true that settlements recorded by Federation were adopted by the local unions as such for the purpose of satisfying local law. However, this modus operandi would not derogate from the right of Federation to negotiate and enter into settlement. This tribunal is guided by the decision in the writ petition for coming to this conclusion. It is further found in the affidavit dated 08-9-1997 Shri.A.K. Muralidharan filed Annexure 1 at page 60 of record showing the names, State and Registration number of the 13 constituents units of the Federation. The constituents units are situated in Gujarat, Karnataka, Orissa, Delhi, Andhra Pradesh, Uttar Pradesh, TamilNadu, Maharashtra, Bihar, Punjab, Rajasthan, Madhya Pradesh and Assam. There can be no doubt that the Federation can represent the affiliated Unions before this tribunal. Section 36 of the Act gives the Federation the right to represent the Unions.

17. It has not been disputed during the oral arguments advanced on behalf of the company earlier the Mumbai General Employees Association was a member of the Federation. So as the association of the workmen at Pune and Wardha. It was submitted that Mumbai Association known as Mumbai General Employees association withdrew from the Federation and a signed a separate settlement. The association at Wardha and Pune followed suit and signed separate settlements. It was argued that even when there was negotiated settlement between the Federation and the company, the Settlement with the Federation was accepted by the constituent units after signing separate settlements. It appears to be argued that this was so because the company did not recognize the Federation as per clause 4 of the minutes of agreement June 1978 (Exhibit W 15). This tribunal had already held that question of recognition of Federation is no longer open to consideration before this Tribunal because the company did not take up this stand before Gujarat High Court. Therefore, all that can be said that as per practice the settlement entered into by the company with the Federation was adopted by individual constituents of the Federation by signing separate settlements. However, this practice would have no impact upon the capacity of the Federation as rightful agent of its constituents to negotiate the settlement on their behalf.

The next question that needs consideration is the plea raised by the company in its written statement regarding the unions of workman at Mumbai and Wardha. It is pleaded paragraph G Bombay General Employees Association Mumbai Registered No. 2992 Maharashtra (henceforth the Mumbai union) and Bajaj Electricals Employees Union Wardha Registration No. NGP/2927 Maharashtra (affiliated to Bombay General employees Association, Mumbai) henceforth the Wardha Union had withdrawn their affiliation from the Federation. The Mumbai Union and the Wardha Union had entered into two separate settlements dated 29-1-96 (Exhibit 5 to written statement) and settlement dated 15-4-1996 (Exhibit 6 to the written statement) prior to making of order of reference. In paragraph G and paragraph k of the written statement it has not been stated that these two unions are recognized unions under the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act 1971 (M.R.T.U and ULP for short) On the other hand the drift of the entire plea in this behalf appeared to be that the Federation was not recognized by the company as the sole bargaining agent and that settlement entered into with the Federation were adopted individually for making the settlement binding on the company. In absence of specific plea, that the aforesaid unions are governed by M.R.T.U.P. and PULP Act 1971, as the two unions have been recognized under that Act, the rejoinder of the workman did not contain any plea of admission are denial regarding recognition of two unions. However, in its rejoinder in paragraph 5 and 6 it was not disputed by the Federation that the two unions had disaffiliated themselves from the Federation. It was however, pleaded that at the time of signing of settlement in the year 1992 these two unions were the members of the Federation. The company has used undue influence upon these two unions after the new elections when the head office was shifted from Mumbai to Ahmedabad. It was pleaded that the settlement made by Mumbai and Wardha Unions were not in accordance with the Act. There was no plea in respect of MRTUP and PULP Act for obvious reasons in the rejoinder.

18. It is true that this tribunal is not bound to follow the strict rules of pleadings provided by the code of Civil Procedure. However, a perusal of Rule 10 B of the Industrial Disputes (Cen) Rules 1957 would show that after reference the party raising the dispute is required to file a statement of claim and the opposite party is given opportunity to rebut the claim by filing the written statement. Then the party raising the dispute has an option to file a rejoinder. It may appear to be elementary but it cannot be gainsaid that this procedure too requires same kind of pleadings. It is inherent in the rule requiring to file the statement of claim that the opposite party knows and meets the claim in the written statement. The party filing the statement of claim is given further opportunity rebut the statement of facts which are new and have been raised in the written statement by opposite party. Broadly speaking even the scheme of these rules akin to more elaborate rules of pleadings in the code of civil procedure. The foundation of these rules as well as the rules in the Code of Civil Procedure is that no man should be condemned unheard. This postulate requires that a man is entitled to know what is being said against him. Therefore, a party must open its cards in the shape of pleadings so that the opposite party replies to it effectively. The knowledge of the facts pleaded against a party is part of

the principles of natural justice. If that knowledge is not there then the opposite party shall be condemned unheard. Therefore, this tribunal is of the view that it should be insisted even before this tribunal that a party relying on certain facts must plead their facts. Now since the company did not take the plea that Mumbai Union and the Wardha Union were governed M.R.T.U. and PULP Act, it could not lead evidence directly to prove the fact that they were recognized Union. A perusal Chapter III of M.R.T.U. and PULP Act would show that recognition is granted after following elaborate procedure. The Industrial Court has to pass an order of recognition provided the conditions under section 19(1) and 10(3) of the Act are complied with. Sub section (3) provides that the number of employees employed in the section falls below fifty continuously for a period of one years the provision of chapter shall not apply. It is true under section 13(ii) the Industrial Court has power to cancel such recognition. It appears that it neither been pleaded nor proved that two unions were recognized under M.R.T.U and PULP Act. The only evidence given is that of Mr. Kudratkar. He stated in paragraph 8 his affidavit that the charter of demand 1-1-1992 submitted by the Bombay General Employees Association and subsequent settlement dated 28th June, 1992 signed in consultation then had binding effect, more particularly as said Union is holding certificate of recognition under M.R.T.U. and PULP Act." This statement did not relate to settlement of 1996 entered into by Mumbai Association. No certificate was produced. This part of the evidence is inadmissible for (1) Lack of Pleading (ii) for non production of certificate. (iii) It does not refer to agreement of 1996. Obviously advantage is being taken of the words used in affidavit to some thing for proving some thing other than that it was meant. The federation was not made aware by specifically pleading that Mumbai and Pune Unions were recognized under the M.R.T.U. and PULP Act by the Industrial Court. The certificate of recognition dated such and such was issued by Registrar of the Industrial Court in Form B under Rule 7 MRTU and PULP Rules 1975 in case the certificate was not filed or annexing the certificate. In the opinion of this tribunal the Federation was entitled to verify the fact mentioned in pleadings and the certificate. In opinion of this tribunal the certificate was not the conclusive proof of recognition. The Federation could prove that there was no legal order in support of recognition or that recognition has been cancelled subsequently. It was argued that admittedly, the number of workmen has been reduced to less than 50 at Mumbai than the chapter ceased apply. This tribunal does not give its opinion on this point for the reason it rejects the argument of company because evidence is inadmissible to prove a fact which requires pleadings. This tribunal is justified in taking this view of the matter because recognition of Union under the MRTU and PULP Act 1971 cannot be treated lightly as the consequences of a recognition or drastic. The Act stand amended to extent specified in schedule I as per section 20 (2) (b) of the MRTU and PULP Act. In this connection, Shri. Chidambaram appearing for the Union argued legitimately that company had not led any evidence regarding application of MRTU AND PULP Act 1971 in case Wardha Union. Similarly no evidence was led in the case of Pune Union which entered into settlement subsequent order reference in the year 2000. In fact he submitted that the story of recognition is false. This tribunal is not giving any final opinion but the examination of settlement of 1992 and 1996 entered into by Mumbai Union do not indicate any where that settlement was under the I.D. Act as amended by the MRTU and PULP Act. This tribunal has examined the letters heads of the Union. They also do not indicate that any certificate was obtained where as they indicate the Registration Number under the Trade Union Act 1926. However, this tribunal does not give any final opinion. The fact remains that this point was neither pleaded nor proved. No evidence was led to show that Wardha Union was recognized Union under M.R.T.U. and PULP Act 1971. The affidavit of Kudratkar or that of any other witness is silent about it. No documentary evidence was placed on record in the shape of certificate. The company has placed on record a copy of Memorandum of settlement entered into by it with General and Engineering Kamgar Sangthana, Pune (Pune Union for short) dated 15-12-2000 Ex-23. No other evidence was led about. Thus there is no evidence that Pune Union was recognized Union under MRTUP and PULP Act 1971. Thus to sum up, the plea raised on behalf of the company by its learned senior counsel during their oral arguments that the aforesaid three unions i.e. Mumbai, Wardha and Pune are recognized Unions under MRTU and PULP Act, 1971 is not accepted.

19. It is now to be decided if the legal effect of the Memorandum of settlements entered into by Mumbai, Wardha and Pune Union under the provisions of the Act as it stands without amendment under 20(2) of MRTU and PULP Act 1971 as provided in schedule I section 2(P) of the Act reads as under "settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an [officer authorized in this behalf by the appropriate Government and the conciliation officer.]

It is clear that section 2(P) recognizes two kinds of settlement:

(i) in the course of conciliation proceedings

(ii) Written agreement between Employer and workmen otherwise than in the course of proceedings; (a)

Where such agreements has been signed by parties thereto in such manner as may be prescribed ; (b) and a copy thereof has been sent to the officer authorised in this behalf by the appropriate Government and the Conciliation Officer.

We are not concerned with the settlement in the course of conciliation proceedings. It is well established that a settlement in the course of conciliation proceedings is that settlement which is a consequence of conciliation by an authority under the Act. The conciliation proceedings may be taken up under section 12 of the Act by the Conciliation Officer or by the Board of Conciliation under section 13 of the Act. It is not case of the company that the Settlements entered into by the company with the Mumbai, Wardha and Pune Unions were arrived at as result of intervention by the authorities empowered to taken up conciliation proceedings. Now it is well established that the words in the course of conciliation proceedings do not imply a private settlement during the pendency of conciliation proceedings shall also covered by aforesaid words. Prior to amendment of 1956 sub section (1) of the Act employed the aforesaid phraseology in Section 18(1) of Act. After amendment of 1956 section 2(P) was amended to include a private settlement. Section 18(1) of the Act as it stood prior to amendment is re-numbered as section 18(3). It employs the same words i.e. in the course of conciliation proceedings employed in section 2(P) and section 18(3) of the Act. The Supreme Court in the case of Bata Shoe Co. P. Ltd. Vs. D. N. Ganguly 1961 ILLJ-303 turned down an ingenious argumentthat phrase during the course of conciliation proceed-ings implied the period for which the conciliation proceedings were pending Wanchoo J. speaking for the Bench held that context required narrow construction to the aforesaid words, although, these words may literally imply the period. This tribunal is of view the meaning accorded to the aforesaid in the Bata Shoe (P) Ltd,. Vs. D.N. Ganguly would apply for interpretation of the aforesaid phrase in section 2(P) and 18(3) of the Act. Any other interpretation shall not be justified logically or historically.

20. It may be noted that after amendment of 1956 section 2(P) of the Act by inclusive definition has expanded the meaning of word settlement. An agreement arrived otherwise than in course of conciliation proceedings have been included. It may also be treated such settlement have to comply with condition (a) and condition (b) mentioned in the previous paragraph hereinabove. The Bombay State(as it there was) had formed Industrial Disputes Act (Bombay), Rules 1957 (The Bombay Rules for short) in exercise of powers under section 38 of the Act. The Central Government has also framed rules known as the Industrial Disputes Act (Central) Rules 1947 (the Central Rules for the short). The industry in question appears to be covered by Section 12(ii) of the Act and *prima facie* the appropriate Government for the purpose of industrial dispute of local unions shall be the State Government under Section 38 of the Act. Therefore, the Bombay Rules shall be attracted. The rule 62(1) relates to the form of Memorandum of Settlement. The Rule 62(2) can be related to condition (a) in the definition of section 2(P) of the rule 62(a) prescribes who shall sign the Memorandum of Settlement on behalf of the employ. The rule 62 (b) prescribes who shall sign on behalf of the workman. the rule 62(4) relates to condition (b) of the definition of section 2(P) as analysed earlier. It prescribes the authority to whom the settlement arrived between the parties shall be sent. In the central rules there is similar rule 58 *Mutatis Mutandis*. The question is whether a private memorandum of settlement entered into otherwise than in the course of conciliation proceedings can be complete without complying with the formalities mentioned in section (P) read with relevant rules. In other words whether compliance of the formalities (a) and (b) is mandatory or directory. The legislature amended section 2(P) in the year 1956, and introduced by way of that amendment a new category of settlement between employer and the workmen otherwise than in the course of settlement. Such a settlement can be called a private settlement as opposed to settlement brought about under guidance and presence of an authority under the Act as was done during the course of conciliation proceedings. The legislature wanted to lend some kind of authenticity to the settlement arrived between parties so that any document purported to be signed by the employer and by persons representing the workmen. Therefore, in section 2(P) itself the aforesaid conditions (a) and (b) were provided for. It is clear from section 2(m) of the Act that words' prescribed' means prescribed by rules. The manner and the method of signing and the authority to whom the copies has to be sent has been prescribed by the rules. In the opinion of this tribunal the procedure indicated in section 2 (p) of the Act and that prescribed by rules applicable to the memorandum relation to an industrial dispute is mandatory. Otherwise the authenticity of a private settlement would be in jeopardy. The rule is that when an act prescribes that a particular thing should be done in a particular manner than that thing should in that manner or none at all.

21. The company in its written statement in paragraph k stated that a separate charter of demands was submitted by the Mumbai Union. It resulted in the settlement dated 29-1-1956 (Exhibit 5 to the written statement). It was further pleaded that there was another settlement dated 15/4/1996 with Wardha Union Exhibit 6 to the written statement. In the case of Mumbai Union a copy of the memorandum of settlement purported to be signed by high officials of the company and the office bearers of the Union including the President and the Secretary. The memorandum of settlement (exhibit 6 with the written statement) is filed along with certain papers. On behalf of the company it is signed by Senior Branch Manager, and

on behalf it appears to be signed by the office bearers whom the workers have authorized by resolution. In the rejoinder it was pleaded that apart from the fact these settlement were obtained by undueinfluence, they were not entered with any legal entity. It was further pleaded that these settlements were bad in law and obtained under undue influence without any permission or knowledge of the Federation.

21. In this case the company has filed the memoranda of two settlements units defence. The normal rule of pleadings is that whatever is stated in a written statement in defence is deemed to be denied. The plea of replication or rejoinder is necessary when the party wants of confess (admit) the additional facts stated in the written statement and plead some other facts showing that the facts stated in the written statement shall not affect the stand taken by him in the initial pleading in the plaint (here the statement of claim) therefore, it is not necessary in the rejoinder to deny additional facts pleaded by the party. Otherwise, there shall be no end to pleadings, the parties shall go on raising points and counter points. Therefore, it was incumbent upon the company not only to file the two memoranda of settlements but to prove in accordance with law it has been complied with it. The two memoranda of settlements cannot be treated as legal documents unless the formalities required by the law for their execution are proved. The burden of the proof of introducing evidence for their proof is upon the persons is on the party who shall fulfil it no evidence is given in support pleading. Moreover, signing a private settlement with a third party is within the special knowledge of the company. The federation could not have any knowledge about the two settlements. Therefore, also the company has to prove the validity of the document in case it seeks to rely on them.

22. Now the case of the company is that it had entered into settlements with the local unions of Mumbai and Wardha. Therefore as per section 2(P) read with section 18(1) of Act shall be binding agreement on the parties provided the formalities contemplated by section 2(p) read with Rule 62 of Bombay Rules have been complied with. We may for our purpose take only part of rule i.e. 62(2) and Rule 62(4). In the case Adik Patel vs. Tata Iron and Steel 1994 Lab IC 2394 the compliance these rules has been held mandatory. The question is if any evidence was led to prove that the formalities mentioned in rule 62(2) were complied with. In the case of Mumbai Union the memorandum of Settlement Exhibit 5 was purported signed by its President and by the Honorary Secretary. However, no witness has asserted in examination in chief regarding compliance. It cannot be inferred from the cross examination of Kudtarkar that Mumbai settlement was singed on 29-1-1996 by the President Shri. H.N.Trivedi and Secretary Shri. Shenoy. However, there was no evidence led to show that Mumbai Union is a registered union. There is at least one sentence in the rejoinder that the local union are not legal entities. No evidence was led to show that copies of Memorandum of Settlement dated 29-1-1996 (Exhibit W5) to the written statement were sent to the prescribed authorities under rule 62 (4) of the Bombay rules. The cross examination of the witnesses examined by Federation especially K. K.Vijayan and Murlidharan does not prove compliance of 62 (4) of the rules. The last line of Memorandum of Settlement dated 29-1-1996 (Exhibit W5 to the written statement) would not prove compliance as it statement which would done something in future. Nor is it clear whether it was compliance of Rule 62 of Bombay or that of Central Rules. So far as Wardha Union (Exhibit W6 to written statement) is concerned no evidence was led regarding compliance of Rule 62 (2) and Rule 62 (4) of Bombay. Only witness Kudtarkar examined by the Compnay did not say anything regarding compliance. Nor does the cross examination establish those facts. The memorandum of settlement with Pune union dated 15-12-2000 (Exhibit M23) and that entered on 24-1-2000 with Mumbai union (Exhibit W50) suffer from the same defect. These settlements were entered into during the pendency of this reference but compliance could be proved by leading appropriate evidence.

23. It was vehemently argued by Shri. P. Chidambaram that the settlements entered into by the company with Mumbai Union dated 29-1-1996 (Exhibit 5 to the written statement) and the settlement dated 15-4-1996 (Exhibit 6 to the written statement) with the Wardha Union prior to pendency of this reference and those entered during the pendency of this reference on 15-12-2000 with Pune Union (Exhibit M 23) and with Mumbai Union on 24-1-2000 (Exhibit W 50) are not binding on all the workmen. According to him a settlement entered under section 2(p) of the Act binds the workmen who are signatory to the settlements and none other. In this opinion of this tribunal this argument based on section 18(1) of the act ignores the fact section 2(p) itself delegates to the rule making authority the manner of signing a settlement 'as prescribed' which means "prescribed by the rule". Moreover, this argument is subversive of principle of collective bargaining which is the soul of labour movement and forms the bed rock of the negotiations made on behalf of the workers by their representatives. Otherwise it would be impossible to negotiate a private settlement. The history of making amendment in 1956 suggests that legislative wanted to provide a mode for private settlement of dispute which are recognized by the Act. Prior to the amendment a memorandum of settlement otherwise than in the course of conciliation proceedings was not recognized. The defect was remedied by amendment act of 1956 by making suitable amendments. The conclusion of this tribunal is supported by the decision of Supreme Court in the case of Herbertsons Ltd. vs. workmen of Herbertsons 1977 to Lab IC 162 and Tata Engineering and Locomotive Co. Ltd vs. Workmen 1981 II LLJ 449.

24. Shri P. Chidamabaram further argued that the two subsequent memoranda of settlement entered into by company with Pune Union 15-12-2000 (Exhibit M 23) and that with Mumbai Union on 24-1-2000 (Exhibit W 50) are hit by section 33 of the Act. This tribunal does not decide this point because it has already held that company has not proved compliance of rule 62 of the Bombay rules suffice it is to point out that it was open to the company to file appropriate application for obtaining permission as a measure of safety. The point raised by Shri. Chidambaram is not decided and is kept open.

25. This takes us to argument of Shri P. Chidambaram that all the settlements entered into by the company with Bombay Wardha and Pune Union amounted to Unfair Labour Practice. The company acted with malafide intentions to create dissensions in the Federation since 1993, when office bearers i.e. the President and Secretary from Mumbai, were defeated in the General Body Election. A new body came into being and its centre of gravity shifted from Mumbai to Ahmedabad in Gujarat. Thereupon, the Federation began to breathe fresh air. However, the management of the company took the defeat of the president and secretary from Mumbai as if it was its personal defeat. Consequently the local Union from Mumbai disaffiliated itself. It was pointed out that last settlement dated 28-6-92 was to expire on 31-12-1995. The newly constituted general body submitted the nature of termination and issued a fresh charter of demands on 24-11-1995.

26. It was argued that instead of entering into negotiation on the fresh charter of demand the company set tight over these demands and did not start negotiations. Before a word of negotiation between the company and the Federation could be exchanged. On either side, the company allegedly signed a memorandum of Settlement with the Splinter Union of Mumbai on 29-1-1966. It was alleged that thereupon the federation approached the Central Labour Commissioner (Central) Delhi for intervening and for making a reference to the National Tribunal. When no action was taken by the aforesaid Labour Commissioner, the Federation was compelled to move the Gujarat High Court the federation was compelled to file writ petition before Gujarat High Court. Consequent to the order the conciliation proceeding were taken up by the Central Commissioner of Labour (C). The company persisted in its adamant attitude and then failure of conciliation was reported resulting in reference. It was argued that the company entered into memorandum of settlements without negotiations on the charter of demands made by splinter Union. This was done by the company only after it received the of charter of demands dated 24-11-1995 and notice of termination of settlement dated 24-11-1995. It was asserted that as per clause 15 and clause 16 of the settlement was entitled to make fresh charter of demands upon termination of earlier settlement as provided in section 10 of the Act.

Shri P. Chidambaram submitted forcefully during the oral arguments that the policy of the company was to divide and rule. Despite the charter of demands of the Federation, the company directly negotiated with the Mumbai union on the basis of its demand dated 29-1-1996. In this connection, it was submitted that only witness examined by the company Shri Yogesh Kudlerkar who had incorporated the written statement in his affidavit for sake of brevity was unable throw any light why the company did not enter into negotiations with the federation and directly entered into negotiations with Mumbai union. This tribunal is of the view that there is substance in the argument of Shri. Chidambaram. The cross examination of this witness revealed that the witness was unable to sustain the allegations made in paragraph K of the written statement. In cross examination this witness claimed that he was working with the company since December 2001 and his knowledge in respect of prior happenings was based on recorded of the company. But the witness fumbled at the very first question regarding the charter of demands made by the federation by saying that he did not recollect it. The witness was positive in his statement that he seen the letters of the company calling the Federation of negotiations and be denied that company did not call anybody for negotiations. He undertook to produce the letter on next hearing. The witness stated that he was unable to say if any person was called for negotiations from the side of Federation when the negotiations with the Mumbai union were going on. He stated that he had no knowledge of the fact that the company settled with the Bombay union without inviting anyone for negotiations from the Federation. He was unable to give any reason for the change in attitude of the company for not negotiating with the federation after expiry of earlier settlement of 1992 contrary to its earlier practice. The witness was unable to say anything about the meetings held by the company with the Federation because he had not seen the recorded and under took to produce it on next hearing. He was unable to say if the Federation was asked to accept the same settlement as was entered into by the company with the Mumbai Union. The witness agreed that the charter of demands of Mumbai Union was issued on 1-1-1996 and settlement was signed on 29-1-1996. He agreed that inference could be drawn that the company and the Mumbai Union settled their dispute quickly. The witness admitted that Former President and Secretary of the Federation Shri H.N. Trivedi and Shri Shenony respectively were the President and Secretary of the Union. These persons occupied the same posts in the federation in 1992. Since this witness had filed his affidavit, it was for him to prove the facts in support of his statement. The witness was the casual and entered witness box without seeing any record. The witness was given an opportunity to produce the documents that he did not do so taking umbrage under the plea that these documents

were destroyed on account of water logging in the magazine floor where they were kept. It was alleged that a floor above the office of company in possession of the LIC had caught fire and during course of attempt to extinguish fire the floor of the company was water logged. This tribunal does not trust the story given out by the witness. The reason is that the company had filed the written statement on 10-2-1997. It is reasonable to assume that the company must have shown to the person all the documents who drafted the written statement. The witness had filed the affidavit on 22-4-2003. He did not state in his affidavit that certain documents were destroyed in Jan. 2002. It appears to this tribunal that this witness is not speaking truth when he said that he had seen letters of the company calling the Federation to negotiate. K.K. Vijayan had filed the affidavit for Federation he had stated in paragraph 5 of his affidavit that the company did not write the Federation for negotiations. This witness was not cross examined by the counsel for the company by showing nine letters inviting the Federation. The major part of his cross examination was done on 3-11-1999 and 10-12-1999. No question was put to him on this point. Shri A.K. Murlidharan who is the Secretary of the Federation was also examined. The company could put to him this question although he had not filed affidavit on this point. Thus, the finding is that company hurriedly entered into settlement with the local union and did not respond to the charter of demand of the Federation. This tribunal finds that it is probable that the management of the company had better relations with then President and the Secretary of the Mumbai union who were office bearers of the Federation for considerable length of time. It appears that the company did not want to negotiate with the Federation because in its opinion the new body was less agreeable to the dictates of the company in view of its 33 point charter of demands. It appears that company has taken the stand that the demand of the Federation were exhorbitant. Shri Kudtarkar stated so in his affidavit and in his cross examination. In the opinion of this tribunal that even if demand of the Federation appeared to be exhorbitant to company, it could not have been departed from its time honoured practice of negotiating with the Federation because it had not lost its representative character for the purpose of collective bargaining. Apparently, the motive behind the action of the company in not negotiating with the Federation was because it could not persuade or compel the new body to give up all its demands and agreed to sign to a settlement given by the company. The action of the company in ignoring the Federation and entering into negotiation with Mumbai Union was only with view create a short of fait accompli for the federation. The company appears tobe successfully only nominally because Wardha and Pune Union have accepted the dictate of the company. Shri Chidambaram is justified in his submission. Shri C.V. Pavaskar learned counsel for company tried to argue that even though it was practice of the company since 1979 to enter into negotiations with the Federation, but it had not recognized the federation as the sole bargaining agent of the Unions it represented. The entire argument is belied by the various settlement filed by federation from 1979 onwards to 1992. The actual facts are that there was tacit agreement between the federation and the company that its settlement shall be implemented as such by units. This was the practice followed since 1979. The clause 4 of 1979 settlement appears to be of no consequence when in actual practice a settlement was negotiated by the Federation between 1979 to 1992. There appears to be no cogent reason for departing from this practice except that the management did not prefer to negotiate with the new body. There is no merit in the argument that the clause 3 of the settlement of 1979 indicated that Federation had no right to negotiate. The history of negotiation and the settlements from 1974 to 1992 filed by the Federation as W1, W15, W16, W17, W18, W19, W20, S21 show to the contrary. The very plea of the company that it realize in the course of time of futility of entering into negotiations with the Federations because its demand would cause loss to company to tune of Rs.10 crores or more per year whereas its income was less than Rs.5.07 crores was a mere pretence. It appears to this tribunal the real reasons was that the company wanted to impose its will on the Federation, because Federation was assumed to be inflexible. There appears to be clash personalities rather than clash principles. Otherwise, parties could sit across the table to sort out the difficulties. In the opinion of this tribunal disregarding the apex body with view to impose its will on the Federation amounted to unfair labour practice on the part of the employer. It amounted to involving the Federation with litigation and giving a message to the unions affiliated with it to fall in line and get the benefit of settlement from the company or languish with the Federation. This is the age old device of divide and rule dear to persons in power. The Romans had made this practice a principle of imperialism. In the opinion of this tribunal of the aforesaid practice is not unfair practice, then nothing is.

23. This takes us to merits of the demand made by the Federation Shri. C.V. Pavaskar, learned counsel for the company after closing his argument stated that the company was willing to give benefits of Bombay settlement and this tribunal may bear in mind the principles involved therein and grant relief to workmen involved in the reference. However, it was submitted that looking to the financial condition of the company it would not be proper to grant the relief to workman with retrospective effect. In the written submission made in behalf of the company the same has been reiterated.

24. The next question that arises for determination is: What are the implications of this offer? One thing is

very clear that the company has shown its willingness to bear the financial burden in future if this tribunal gives an award in respect of all the units of the company if the benefits given to them are confined to those that are given to the Mumbai Union. The other aspect of the matter is that company says that it will not give its units the same benefits as were given to Mumbai Union from the date they were given to it. The reason given is the depletement of the financial condition of the company. The Federation does not accept the offer for the obvious reasons. It feels that the company still wants to impose its will on it.

25. Therefore, it would be proper to consider the solution to problems raised in the industrial dispute the reference on the basis of general principles. The task of an industrial adjudicator is unenviable. He is required to consider the mass of facts thrown at him at random and the theories which may be suitable for adjudication to particular industry at particular time not to the problems at hand. In the adversonal system of justice each party argues that certain observations made by certain courts lay down universal principle in all circumstance. In labour jurisprudence we cannot subscribe to static principles. They are as dynamic as the life itself. The precedents cited at the bar are mind boggling for the reason what is stated in therein are generalizations suitable to particular circumstance of a case at a particular time. Those statements are taken out of context by either party as gospel of truth. After considering the bulk of authorities cited before this tribunal, it would be proper to consider only the general principles rather than the 'law declared' in particular case as binding. It must be remembered that the Federal Court itself had recognized way back in 1949, the industrial adjudicator is not bound to give its opinion strictly in accordance with the law of master or servant. The award of the tribunal is not fettered in any way by limitations applicable to ordinary courts. The award may contain certain provisions of settlement which no court can give. In *Western India Automobile Association* vs. *Industrial Tribunal* (1949) I LLJ 245 (per Mahajan J at page 256) Justice P.B. Gajendra Gadkar in (1961) II LLJ 663 pointed out that the task of an industrial adjudicator not confined to administration of justice strictly according to law". It appears that Ludwig Teller in Labour Disputes volume 5 had made a statement to the effect:

".....an industrial arbitration may involve the extension of an agreement or making of new one or in general creation of new obligations or modifications of old ones while commercial obligations generally concerns itself with the inerpretations of existing obligations relating to existing agreements"

(quoted by O.P. Malhotra in his Industrial Disputes Fifth Edition at page 737) The author says that the observations made by Mukherjee J in the case of Bharat Bank Ltd vs. Employees of Bharat Bank 1950 LLJ 921 at page 948, by S.K.Das J in the case of Rohtas Industries Ltd vs. Brynandan Pande (1956) II LLJ 444 at page 449 and that made by Untwalia J in Premier Automobiles Vs. Kamlakar Shantaram Wadke (1975) II LLJ 445 at page 450 are inspired by above statement by Ludwig Teller. Suffice, it is to cite observation of Untwalia J of Supreme Court because the earlier authorities were considered by him.

".....the powers of the authorities deciding industrial disputes under the Act are very extensive much wider than the powers of a Civil Court, while adjudicating a dispute, which may be an industrial dispute. The Labour Courts and the tribunals to whom the industrial disputes are referred by the appropriate Government under section 10 can create new contacts, lay down industrial policy for industrial peace, order reinstatement of workmen, which ordinarily Civil court could not do".

The aforesaid observations and other observations in earlier cases show that labour courts are not required to adopt a approach governed by the past but may create a new picture in the shape of rights and obligations unheard of in the precincts of a normal Civil Court. In such a situation each reference has to be confined to facts and circumstance obtaining in that industry. The general principles laid down in the precedents are of value in determining the new picture. Beyond that the precedents of past are frozen into principles applied by a labour court to a dynamic situation. The tribunal should be conscious of the forces of Yin and Yang i.e. (Law of changes) in the industry as a whole and the industry with which it may be dealing. But the laws of change are not explicit but are based on what Justice V.R.Krishna Iyer expressed as Judicial hunch.

26. It would now be proper to consider general principles of wage fixation. The founding fathers of the Constitution of India were conscious of the fact that a large segment of labour in India is unorganized. Even the organized labour was being exploited and the free India had taken steps in right direction by framing basic industrial legislation like the Act and the Minimum Wages Act. There was positive desire on the part of the constitution makers that the lot of labour in the country deserved improvement. They introduce in Article 43 of the constitution the concept of living wage for the workers and adopted its promotion as a directive principle of governance of the country by the State. Since then the terms wages has acquired different meanings in different contexts. It has been considered and categorized at six layers. Viz. (i) Statutory Minimum Wages (ii) the bare minimum wage (iii) the minimum wage (iv) the fair wage (v) the living wage and (vi) the need based wage. The Minimum Wages Act came into force in the year 1948 and brought in its train the concept of minimum wage fixed by the statute. The concept of the bare or basic wage has developed by industrial awards and the concept of minimum wages fair Wages and the living wages was discussed in the report of fair Wages Committee. In the

year 1957 the Fifteenth session of Indian Labour Conference developed the concept of 'need based' minimum wage. However, the society is always on the march and therefore, apart from the broad rubrics given above, it is difficult to define the aforesaid concepts. The state economy began to move with the passing of time. What was moving; developed speed. Therefore, these concept have grown with the growth of economy and the consequent charges in social conditions. The Six concepts are dynamic in nature. This aspect was accepted by the Report of National Labour Commission. This document was filed on behalf of the company. Justice P.B. Gajendra-Gadkar a judge without parallel in knowledge and experience in labour matters, stated in the case of Gover Aluminium Works vs their workmen (1958) I LLJ I at page 60, that the concept of living wage, minimum wage and fair wage, varied from country to country time to time, depending upon the economic development and even in particular industry. However, Justice K.C. Das Gupta, in the case of Hindustan Times Ltd vs. their workmen (1963) I LLJ 108 at page 112 stated as follows: "At the bottom of the ladder, there is minimum basic wage, which the employer of any industrial labour must pay in order to be allowed to continue an industry. Above, this is the fair wage, which may roughly be said to approximate to the need based minimum in the sense of a wage which is adequate to cover the normal needs of average employee regarded as human being in the society. Above the fair wage is the living wage-a wage "which will maintain the workmen in the highest state industrial efficiency, which will enable to provide his family with all the material things which are needed for their health and physical well being, enough to enable him to quality to discharge his duties as a citizen". The above attempt on the part of Justice K.C. Das Gupta to describe different concepts of wages have been accepted by the Supreme Court in Hindustan Antibiotics Ltd. vs. Their workmen (1967) I LLJ 114 at page 120 workmen of Gujarat Electricity Board vs. Gujrat Electricity Board (1969) II LLJ 791 at page 796. Let up now consider in short the lowest level of wages.

Minimum basic or bare Wage: It is the lowest level of wage which depending upon the industry, context and time, is supposed to be paid by the employer compulsorily. The employers have exploited their superior economic situation. They barely fed or half fed the workmen. This was before the labour forces began to organize themselves. Gradually things began to change in industrialized units on account of the industrial revolution with the expansion of economy but nothing happened in colonies. India was one such colony. The foreign rulers and the Indian Industrialist equally exploited the workmen. This exploitation was counter productive as all exploitation is, in the long run is. Champaran was the first episode in the industrial exploitation which served the seeds of freedom movement more firmly then ever. It was a lasting shame and a tribute to the tale of exploitation that the industrial adjudicator was trying to grope into defining what minimum basic wage meant on the anvil of freedom. A reasonable man believe me, there are millions of them would say that the minimum basic wage would be the wage which would fully feed a family, give them adequate clothing and some kind of shelter. Perhaps this is best definition we can get. Of course, these expressions are not constant and may change with the state of economy. However, they indicate the state of desperation to which the workmen are driven in an under developed or so called developing economy.

27. **Statutory Minimum wage:** This wage is a consequence of legislation. Parliament in its wisdom thought that it would be proper to declare minimum wage from time to time by issuing notifications fixing the minimum wages in different scheduled Industries of unorganized sector. There is statutory compulsion to pay the Notified Minimum Wages. The Act provides penalty of criminal prosecution and gives relief to the workman who is deprived of the minimum wage. The legislation was helpful in making workmen conscious of their rights in the unorganized sector of the Industry. However, an enactment cannot bring in social revolution. If the Act is not implemented, it remains a paper tiger. A very senior Advocate, who earned a lot money in his life time cynically told this Presiding Officer that he had made his life comfortable due to spate of legislation unleashed by Parliament. His opinion was whenever, a new legislation is made, the chief beneficiaries are the lowers. This Presiding Officer cannot be so cynical in his attitude to the law making process in the country but it cannot be denied that machinery of implementation of an enactment has mostly falled behind the standards expected of it. This may be due to corruption or political interference it is difficult to say. Perhaps blame lies to the penchant for legislating and forgetting the problem. It is humbly pointed out that legislation without awareness of implementation is lame. It cannot be treated as Panacea without hard social work.

28. **Minimum Wage:** This concept occupied a higher rung in ladder of wages. The statutory fixation of wage may lag behind in nothing the ground realities. It may take time to conceive it. The situation may change before law decides the minimum wage and it is implemented. A cynic has said the law lags forty years behind. The opposite attempt may also not help. If far too progressive a law is made then it would remain unimplemented. In fact this minimum wage should be related to both above the subsistence level. The Fair wages committee had occasion to say that the concept of minimum wage should not be confined to 'bare sustenance of life'. It must go little further to give the workman facilities for some measure of education, medical requirements and amenities necessary for preservation of his efficiency. It was observed that an industry which cannot provide minimum wage had no right to exist. It was further observed that in case the continuation of such industry was imperative, in the larger interests of country then it was equally important that

minimum wage should paid by the State. The Committee was of the view that minimum wage was at lowest rung of the Fair wage. Further, the committee was of the view that in determining the minimum wage, it was not necessary to look to the capacity of the employer to pay but solely on the requirements of workers. In the case of Chandra Bhawan Boarding vs. State of Mysore AIR 1970 SC 2042 Justice Hedge of Supreme Court pointed out that concept of minimum wage is an intermediate to a wage which is just sufficient to meet bare sustenance of an employer and his family. It includes other primary needs like schooling of children, medical expenses and transport charges etc. This is what a civilized society expected from an employer Needless to say the Minimum Wages Act, 1948 gives sufficient power to fix minimum wages as stated above. However, the Act deals with fixation of wages in unorganized sector of the industry.

29. **Fair Wage:** If we think progressively, then we shall find at a higher step another concept called 'Fair Wage'. It lies on rung higher than the minimum wage and lower than the living wage. Roughly speaking it would be a fair wage if the employer pays to his workmen the same wage as is prevalent in the market in the industry of the nature comparable to his industry for which the wages are fixed. If we are inclined to think socialistically then we may say that the concept of Fair Wages should be ideally that which is paid by the predominant industry in that field. The committee on fairs wages felt that the lower limit for minimum wage must be determined by the need of the workmen. The upper must be determined by the capacity of industry to pay reasonable wages. The factors that may come into play in between may be (i) the productivity of labour; that is the contribution of labour (ii) the prevailing rates of wages that is the market rate (iii) level of national income and its distribution (balancing factor) and (iv) the place of the industry in the economic structure of the country a (status of industry according to the need of the nation). It was affirmed by the aforesaid committee that it was difficult to assign any real weight to above considerations while fixing the wages of workmen actually. The task of adjudicator, therefore, appears to be keep in the back of the mind the aforesaid nebulous concepts. The adjudicator therefore is relegated to strike balance between the load of work and the capacity to pay to take a fair cross section wages of the concerned Industry in region if there be any; The adjudicator is also required to consider the general standard of living based on the National income of country and guard himself against fixing the higher standards prevalent in developed countries, whose natural incomes are far more superior to our country. The society cannot be burdened with weight that it cannot bear. The adjudicator should be aware that if he gives unduly unrealistic wage packet to workmen in an industry then its national reaction would be to cut costs by reducing the number of employees and this action is turn would create further unemployment. The balanced picture requires tight rope walking on the part of these on whose lot falls the fixation of wages.

30. **Living Wage:** The 'living wage' concept is yet higher it goes above bare physical subsistence but looks towards the decent standard of living after fulfillment of all the needs of a worker during the working life and thereafter in retirement. It includes not only his personal needs but that of the numbers of his family with serve degree 'frugal comfort'. It is above the fair wage in the scheme of things that it takes into consideration old age requirement of a worker and same provision for the old age and evil days. There is an element of wistfulness in this concept for an adjudicator. This wage is usually out of reach in an under developed country and its pursuant may be like one author puts, like squaring the circle. However, great dreamer as the was Chief Justice K. Subbarao of the Supreme Court was struck an optimistic note when he said that as nation would progress we shall begin to consider living wage as possible.

31. **Need Based Minimum Wage:** The need based minimum wage is altogether different concept. However, this concept is consumed by fair wage. The need based minimum wages comes at the bottom part of fair wage and is at the top of part of minimum wage. There is no possibility of mistaking midnight for noon, but the precise moment twilight becomes darkness is hard to determine. The concept is need based minimum wage lies in the twilight zone. It is something more than minimum wage but something less than fair wage. It belongs to realm when minimum wage begins to turn into fair wage.

32. The above picture of the categories of wages is given with a view to give back ground under which this tribunal has to find out just solution to the questions posed. This tribunal cannot abruptly plunge into the agruments of Federation without keeping the back drop in the mind. Again the attempt is to towards brevity and avoiding unnecessary case law.

33. The industrial adjudicator is not an ineffective angel beating his wings in the luminous void. He must be aware and awareness must be shown by him. Therefore, it is necessary to consider the different sectors of the industry with which he is suppose to deal (i) Public Sector (ii) Private sector (iii) Government sector (iv) Service sector. This tribunal is entrire agreement with Shri. P. Chidambaram that these four sectors are the major employers. There is however, another sector, which consists of poorest of poor. It may be called Zero sector. It consists of private employers where unorganized labour works. It is connected with agricultural labour, domestic servants in the city etc. It is usually ignored because it defies classification. However, so far as main employers are concerned the above four sectors are in the field. In our country the biggest employer is the Government sector. Since the

State had chosen to be a welfare state from the very inception of freedom, it took upon itself the socio economic responsibilities as a model employer. The result is that a provision has to be made by the central as well as the State government for adequate wages for the employees. There is over employment in this sector and a heavy burden of payment emoluments and other benefits is reflected in deficit of the annual budget. The public sector, was treated as the commercial arm of state in the mixed economy. The core industries essential for development of the country were allotted to this sector. It was but natural that these public sector companies were directed to follow the policy of state for curbing unemployment and providing better conditions to the workers employed by them. The service sector i.e. the Panchayats, Municipalities and the Corporations. They are part of the local self government. They also give employments as per directions of the Government. The private sector industry is another employer. The bulk of medium sized industries and small scale industries are in hands of private entrepreneur. There are some giant private industries. They may be monolithic or diversified. These industries are driven by profit making policy as the domineering aim. Naturally private industries expect greater efficiency in performance. Ideally a private industry, is supposed to be free from the shackles of social obligations and pursue its aim to earn more and more profit relentlessly and soullessly. It may hire persons in its best interests and fire them if they are no longer required. It may thus exploit the weaker sections of the society.

34. It has been argued that the Fifth Pay Commission gave substanitial relief to the employees in the Government sector. The Central Government had decided to implement the recommendations of the Fifth Central Pay Commission. Most of the states followed suit. It was natural that employees of the Municipalities and the Municipal Corporations reaped benefit from that report. Thus, in the service sector the urban local self governments are required to walk in step with the State governments. The result is the Central Government, the State Government and the local self governments have incurred huge deficit in their budget. The consequence is inflation as the State fulfilled the huge gap by creating more paper money. Shri. Chidambaram submitted that the recommendations of the Fifth Pay Commission cannot be totally over looked while deciding the lot of its workmen of the company.

35. In this back ground, it is urged that this tribunal should consider the validity of demands of the workmen. It is undisputed that the company is a private sector enterprise and is in existence since 1938. It admitted by either party that the company is marketing electrical goods used for lighting and domestic electrical appliances. It has not been specifically denied that the company undertakes electrical contract jobs on turn key basis catering to large industrial projects. It is also not in dispute that the company carried on its marketing activities through out the country. It had twenty branches in the country as per schedule 1 to written statement or Exhibit W1.

36. In paragraph 1 of the written statement the company stated that it employed 845 persons. The 688 employees were not covered by the category of staff which are governed by a settlement. In other words, that category staff i.e. 688 employees were not covered by the definition of workman. It appears that on the date of filing the written statement only 157 persons were workmen employed by the company. It was the contention of the company that the Federation could represent only 121 persons as 13 unions were affiliated to it. The fact that out of 845 employees in all 688 employees were not covered by the settlements was not disputed in the rejoinder. The company's witness MW2 Vinay Vasant Sahane stated in cross examination that number of workmen has been reduced to 80. He did admit that at the time of filing written statement, out of 845 employees in all 688 would not be covered by the category of workman. Thus this tribunal comes to conclusion that at the time of filing the written statement itself number of workmen that are likely to affected so far as the benefits in respect of revision of wages etc. is concerned is not huge in the sence thousands of the employees are likely to be affected by the award. On the other hand, the break up given by the company shows that no establishment, has more than twenty workmen in one of the units of the company. It has been argued on behalf of the company that when an industry is flung far and wide the formula known as industry cum regional formula may be applied, while considering the wage structure and Dearness allowance with an eye on total wage packet or the take home salary of a workman. The aim of the principle on which this formula is based is that in a particular region the pay scales and the Dearness allowance should not be so fixed that they are not in line with the comparable industries in the region. Otherwise, the fixation at excessive rate may cause industrial unrest on account of diversity of wages. The danger of migration from unfavourable to more favourable industry may result in unfair competition. Therefore, balance has to be maintained by fixing the equivalent wages in each unit of industry with the comparable unit in the same region. It is also well established that the industrial adjudicator may give more emphasis to regional parity if there is no comparable unit in the region. It can go to other industries for finding out the figures in the region. Here regional aspect is emphasized at the expense of industrial unit. It is obvious that aim and object of this industrial cum regional formula is to avoid industrial unrest. This tribunal was taken through a number of cases on this point. It is not necessary to reproduce the relevant part in each case. It would be sufficient to cite

some of the decisions wherein the above formula was considered:

(i) Express Newspapers (P) Ltd vs. Union of India (1961) ILLJ 339

(ii) Greaves Cotton and Co. Ltd. vs. Their workmen (1964) ILLJ 342

(iii) Bengal Chemical and Pharmaceutical works Ltd. Vs. its workmen (1969) 1LLJ 751

(iv) Remington Rand vs. Their Workmen (1962) 1 LLJ 287

(v) French Motor Car Co. Ltd. Vs. Their workmen (1962) 2 LJ 744.

In the case of Novex Dry Cleaners vs. Its workment (1962) 1 LLJ 271 and Williamsons (India) (P) Ltd vs. Its workmen (1962) 1 LLJ 382 Gajendra Gadkar J tried to categorize the considerations based upon the Industry-cum-regional formula. However, Hidaytullah J in the case of Kamani Metals and Alloys Company vs. Their workmen 1967 II LLJ 55 stated the guidelines provided in those decisions cannot be read as if they were statutes. In the case of Prabhakar Potiram 1968 II LLJ 266 Dixit C.J. has also taken a similar view. However, the aforesaid formula is after all formula and does not become a rigid statutory principle. The formula has been applied to the units where actual industrial work is performed as is done in factories. This formula does not mean however, that the Industrial adjudicator is required to enter into fruitless enquiries in each case even where none is called for. The observations of Justice Hidyatullah in Kamani Metals & Alloys and Company Ltd vs. Their workmen (1967) 2 LLJ 55 (supra) may be borne in mind. In the opinion of this tribunal his observation may also apply to a situation where the above formula did not come into play. Justice Hidayatullah was referring to tests applied by Justice Gajendra Gadkar.

"The observations no doubt lay down guidelines but they are not intended to operate with the rigidity of a statutory enactment.....The Court has indicated what lines of enquiry are likely to lead to the discovery of correct data for the fixation of fair wages.....but fruitless enquiries into matters of no particular importance to a case are hardly to be insisted upon rather they prove of assistance they might well frustrate the very object in view. Each case required to be considered on its own fact".

We have already seen that this tribunal has very wide powers. Consequently, this tribunal can record a finding that the fact situation is that the application the industry cum regional formula does not serve its purpose. In the case of workmen of Hindustan Motors Ltd vs. Hindustan Motors Ltd. (1962) II LLJ 355 Justice Kuldacharan Das Gupta held that it is desirable to have as much uniformity in the wage scales of different concerns of the same industry working in the same region. It may not however possible to obtain this object because of different financial capacities. It may be noted that demand for revision of wage structure of the workmen is mostly covered with the workmen who perform ordinary work which cannot be said to require un-common technical skill. Most of industries employ these categories of workmen like machine operator, Senior Mechanic or Technical Assistant may not be peculiar to the marketing industry of the company. However, this tribunal is not going to rest its award on the above fact alone but shall state hereinafter very important consideration for rejecting the arguments based on the industry cum region.

37. The history of the company is against the application of region cum industry formula. The company has been dealing with its workmen by fixing uniform wages for all its units. It is apparent from the pleadings of company itself that Federation came into being way back in 1974. It was registered subsequently in 1975. It is not in dispute that exhibit W2 is the settlement (Schedule II to the statement of claim arrived at in the year 1975. The settlement came into force since from 1-4-1974. It is also undisputed that all the terms of that settlement were implemented with effect from 1-4-1974. The pay scales were fixed for all the units from 1-4-1974. The Exhibit W 13 shows that representatives of the workment of all other units were required to accept settlement dated 7-2-75 entered into by the company with the Mumbai Union as per Exhibit W 14. They also gave an assurance to the company that the Unions representing the various unit shall not make demand involving the company at least for three years onwards in any financial burden. The exhibit W 15 is the minutes of settlement dated 10/5/1979. It is not disputed that the terms of settlement with the Federation were implemented by the compay. It does not matter that local unions adpoted the terms of settlement. The fact remains the service conditions of the workmen were uniform throughout the industry. Again uniform terms of settlements were implemented after the company entered into a settlement dated 19-4-1984 with the Federation as per Exhibit W 17 or (Exhibit 8). Minutes of Agreement dated 1-7-85 Exhibit W 18 Exhibit W 29 dated 30-6-86 Exhibit 20 dated 3-12-1988 and Exhibit 21 dated 28-6-92 are the agreements negotiated by the Federation with the company. All the units of the company had accepted those conditions as per terms of these settlements. Thus company itself was negotiating uniform serving conditions throughout the country for its units. Moreover, it is implicit in the offer made by the learned counsel Shri. C.V. Pavaskar that the company is not averse to implementation of uniform conditions of service for all its units through out the country provided the Federation accepted the memorandum of settlement entered into by it with Mumbai Union on 29-4-1996. Thus, even today the company is not averse to the idea of uniform conditions of service for all its units. Looking to nature of the work performed by this marketing company and the number of employees covered by the order of reference. the argument based on region cum industry need not

be adhered to. The number of workmen employed by the company are not such that company should be allowed to raise some what legalistic agruments which are not based on the ground realities. The above conclusion, however, does not clothe this tribunal to act in any arbitrary manner. The interest of the company and capital of the share holders have to be borne in mind by an industrial adjudicator. This award is not bounty but an adjadication of conflicting rights and the clash of the points of view.

The third schedule to the Act enumerates the powers of a tribunal constituted under section 7A thereof. The item No. 1 of schedule III gives power to the tribunal to adjucicate the the dispute regarding "wages including periods and modes of payment" section 2(rr) of the Act gives wide definition of the wages. Primafacie the definition includes all amounts payable to a workman in terms of money unless expressly excluded by the definition expressly. It is apparent that tribunal can consider any dispute which is existing regarding wages at time of raising of industrial dispute before the conciliation officer provided the terms of references allow him to do so. In case certain allowances are not covered by the term wages as defined under section 2 (rr) of the Act, or in the alternative of so could been never paid to the workman as wages, then they should be subject matter of reference if there was any industrial dispute raised about them. The second item of schedule II refers to compensatory and other allowances. This entry gives power to the tribunal to adjudicate upon allowances covered by the entry even if they are not part of wages provided there was industrial dispute between the workmen and the employer as a new item of claim and referred to for adjudication by the appropriate government. The items specifically excluded from definition wages like bonus are not covered by item No. 1. However, item No. 5 of schedule II permits a workman to raise the dispute under item No. 5 in respect of bonus profit sharing, provident fund and gratuity. Thus, appropriate Govt. can refer the dispute on aforesaid item separately provided there be a separate demand and denial for grant of relief. However, the task of the industrial adjudicator is to hold the balance between the capital and labour. He should bear in mind that workers may have just claim for fair and higher wages. As against this the industrial adjudicator should also consider that in a private industry, the employer has right to make profit. Naturally, the right to make profit will depend upon the financial capacity of the employer. Therefore, an industrial adjudicator must note the additional burden put upon resources of the employer if there is hike in wage structure. The industrial adjudicatory may also consider that in case wages are fixed at high rate how it will affect the price structure generally and the reasonableness of additional burden which the consumer may have to share as consequence of increase in the prices of goods. These are some of the considerations which have to borne in mind while fixing the wage structure. It should be remembered that task of an industrial adjudicator is pragmatic. He cannot talk in terms of absolutes but only relatives. The industrial adjudicator is required to make rough and ready guess regarding the consequences from the facts placed on record.

39. Looking to the task before the industrial adjudicator, he cannot but be humble. Let us then consider the Demands of the Federation in this spirit.

Demand No. 1 : Scales of Pay : It relates to pay scales. It appears from the settlement dated 17-2-75 Exhibit W 13 that the company had agreed to pay the following scales pay for the seven categories of its employees with effect from 1-7-1974.

Sr. No.	Category	Grade
1.	Peon (all categories Packer, Helper Watchman.	Rs. 90-5-115-7-150-10-200
2.	Sub-Clerk, Driver, Mechanic Electrician.	Rs. 120-7-155-10-205-12-265
3.	General Clerk-Typist -cum-clerk Stores Clerk, Telephone Operator, Accounts clerk	145-10-195-15-270-20-370
4.	Receptionist-cum-Telephone operator. Steno-typist, punch and card operator and Machine Operator.	Rs. 160-12-220-15-280-20-400
5.	Senior Clerk, Stenographer, Stores keeper, Salesman, Comptist Draftsman.	Rs. 180-15-255-20-355-25-480
6.	Correspondence Asstt. Senior Machine Operator, Jr. Sales Representative, Jr. Technical Asstt.	Rs. 200-20-300-25-425-30-575
7.	Commercial Assistant, Senior Sales representative	Rs. 250-25-375-30-525-40-725

It has been argued on behalf of the Federation that the company issued a circular dated 19-9-83 circular No. PAD 108 of 1983. It committed unlawful and unfair legal practice and reduced the pay scales of 7 categories of workmen. It was urged that the act of company was in violation of section 9A of the Act. However, the settlement dated 19th April 1984 (Exhibit 8 or Exhibit 17 both are same) made the following pay scale.

Sr. No	Category	Salary Grade	Revised Grade
		As per company's circular No. PAD/08	
1.	Peon (all categories) Packer, Helper Watchman.	Rs. 35-3-50-4-90-EB-5-115-7-150-EB-10-200	Rs.35-5-115-7-10-200
2.	Sub-Clerk, Driver, Mechanic Electrician.	Rs.50-4-70-5-120-EB-7 155-EB-12-265	Rs.50-7-155-10-205-12-265
3.	General Clerk-Typist-cum-clerk Stores Clerk, Telephone Operator, Accounts clerk	Rs. 75-7-145-EB-10-195-15-270-EB-20-370	Rs. 75-10-195-15-270-20-370
4.	Receiptionist-cum-telephone operator, Stenotypist, punch and card operator and Machine Operator.	Rs. 100-10-160-EB-12-220-15-280-EB-20-400	Rs. 100-12-220-15-280-20-400
5.	Senior Clerk, Stenographer, Stores keeper, Salesman, Comptist Draftsman.	Rs. 120-10-180-EB-15-255-20-355-EB-25-480	Rs. 120-15-255-20-355-25-480
6.	Correspondence Asstt. Senior Machine Operator, Jr. Sales Representative, Jr. Technical Asstt.	Rs. 140-15-200-EB-20-300-25-425-EB-30-575	Rs. 140-20-300-25-425-30-575
7.	Commercial Assistant, Senior Sales Representative	Rs. 170-20-250-EB-25-375-30-525-EB-40-725	Rs. 175-25-375-30-525-40-725

It would be clear from above chart which has been culled out from Exhibit W8 the settlement dated 19th April 1984 that there was considerable change in the pay scale by way of reduction. The pay scale of each of 7 categories was reduced by the circular. It is astonishing to note that in settlement dated 19-4-1984 Exhibit W (Ex W 8 or Ex W 17) that the pay scales were not revised. There was slight upward change in the increments rate and removal of condition of efficiency Bar. It is apparent to the naked eye that settlement of 19th April 1984 between the federation and the company had maintained the reduction in the pay scale of the workmen. A Comparison of the two charts aforesaid would show that the minimum pay scale of category No. 1 was reduced by Rs. 90-Rs. 35= Rs. 55, Category No. 2 by Rs. 120-50-Rs. 70, Category No. 3 by Rs. 145-Rs. 75= Rs. 70, Category No. 4 by Rs. 160-Rs. 100-Rs. 60, Category No. 5 by Rs. 180-120= Rs. 60, Category No. 6 by Rs. 200—Rs. 140=Rs. 60, and that Category No. 7 by Rs. 250—Rs. 175=Rs. 75. In the settlement dated 19th April 1984 (Exhibit W8 or Exhibit W 17 the pay scale given by the circular did not change. It was agreed that those who were already in service shall not be affected by the changes made. It has been argued that so called revision of grade maintained the minimum and the maximum in the pay scales arbitrarily made applicable by the company by way of circular. It only tinkered with the rates of increments and dropped the condition of crossing the Efficiency Bar.

40. It has been argued on behalf of the federation that the pay scales of settlement dated 17-2-1975 which became prevalent from I-4-74 continued to exist till 19-9-1983. The subsequent settlement dated 10-5-79 (Exhibit W 15) did not alter those pay scales. In the settlement dated 10-9-1982 (Exhibit W 16) it was agreed that the existing pay scales shall continue for those workman who were on the rolls of the company on the date of signing the settlement. It was however, provided in clause 2 "that company" was free to appoint workman at such basic salary that may be outside the existing cadre of pay. It was asserted on behalf of the Federation in this case that the company appears to have illegally issued circular in respect of 7 categories of workmen in existence for creating new scales of pay for the newly appointed employees. The only argument that has been raised on behalf of the company is that the circular was acted upon. It was argued that the company was authorized to settlements dated 10-9-1982 to reduce the pay scales in respect of new employees. It was further argued that even in subsequent settlement dated 19-4-1984 (Exhibit W 8 or W17) the Federation had accepted the pay scales for new workmen with modifications. It was argued on behalf of the company that subsequent settlements dated 1-7-1985 (Exhibit W 18), 30-9-1986 (exhibit W 19) 03-12-1988, (Exhibit W 20), 28-6-92 (Exhibit W 21) did not alter the pay scales. The Federation, therefore, was not justified in arguing that the company had committed illegalities in issuing the circular dated 19-9-1983.

41. In the opinion of this Tribunal, it may not be out of place to consider the cross examination of Mr. Kudtarkar. He admitted in cross examination if pay scales mentioned in Ex W 2 are read with Ex W 8 then it can be said that the pay scales have been reduced. He further stated that the workmen had accepted the reduction in pay scales because it did not affect them. It is apparent that company had no power to introduce a new set of pay scales for the workmen by its circular No. PAD 108, dated 19-9-1983. This tribunal has considered the settlement dated 10-9-1982 (Exhibit W 16). It does not authorize the company to fix new pay scales for new workmen. It only gives the power to appoint persons outside the cadre. The company could

not have created two sets of pay scales in the same organization for the same work. One for existing; cadre another for cadre which is recently employed. Apparently, this is violation of principle of equal pay for equal work. The witness Kudtarkar let the cat out of bag when he stated that no objection was raised and the subsequent settlements dated 19-4-1984 (Exhibit W 17 or Exhibit W 8) had ratified the circular which had created a new set of pay scales. Apparently, and legally the company may be justified in this argument where the validity settlement dated 19-4-1984 (Exhibit W 17) and other settlements entered into thereafter 1974 were subject matter of a challenge in this reference. However, the Federation has brought to the notice of this tribunal the *modus operandi* of the company for justifying its demand for enhancement of pay scales. The entire history of the settlements show that since the company had reduced the minimum basic wage in each of the 7 category as existing from the year 1974 by circular PAD 108 19-9-1983 and the same was accepted as such with minor variations by settlement dated 19-4-1984. Nothing has been brought to the notice of this tribunal by way of justification of this step. It is also apparent that as per settlement dated 28-6-1992 the pay scales fixed by settlement dated 19-4-1984 (Exhibit W 17 or Exhibit W 8) are prevalent. It is also apparent that pay scales prevalent from 1-7-74 as per settlement dated 17-2-1975 (Exhibit W 13 or Exhibit W2) were higher in respect of minimum basic pay for each of the 7 categories. The Federation appears to be justified in making a demand of higher pay scales in its charter of demand at least from 1-1-1996 when the settlement of 1992 had to expired. Thus, apparently, the 1st condition that demand for higher wage should be just can be accepted.

42. The next question is, if this tribunal should grant enhancement in the pay scales as per demand made by the Federation. This tribunal has already noticed the fact that the company has shown willingness to accept the award in respect of all the units as per settlement with the Mumbai Union from the date of the award. However, neither of the awards entered into by the company with the Mumbai union *i.e.* the award dated 29th June 1996 (Exhibit 5) to the written statement and the award dated 24th Jan., 2000 touch the existing pay scales.

43. Therefore, it is required for this tribunal to determine the demand in the increase in the pay scales is justified from the point of view of the company. However, before it is done this tribunal is required to notice an argument on behalf of company that the wage structure of the company does not call for revision of pay scales. It has been argued vehemently on behalf of the company that, even though, the pay scales were not increased during the period, the company granted substantial benefits to the workman in shape of weightage increments special allowances and a host of others. It was submitted that this tribunal should look into the fact that a number of settlements from 1984 to 1992 were negotiated by Federation but the Federation did not press for revision of pay scales. This argument that earlier the Union did not press for revision of pay scales has to be rejected as such. This tribunal is not required to consider if earlier settlements were rightly entered into. However the fact remains the pay scales were never revised by the company giving benefit of higher pay scales. It cannot be disputed that since 1974 there was considerable inflation and the purchasing power of the rupee did not remain same. The history settlements shows that even the minimum basic pay was reduced by way of circular. The settlement dated 19th April 1984 (Exhibit W 8 or W 17) accepted the reduction is basic pay with minor variations. The only justification for acceptance in reduction in the basic pay scales in 7 categories given by the witness Kudtarkar appears to be that it did not affect the workmen in the service of the company. It would affect the persons who were likely to join company. It is apparent that existence of two pay scales for doing same kind of work would be violative of the principle of equal work for equal pay. The justification of existing pay scales upto 1992 cannot be accepted on the ground that in the past the same was accepted by the Federation. The demand of the Federation was not for the past but for the future after the expiry of settlement of 1992. Another hints of the same argument is that it was unnecessary to revise the pay scales as sufficient benefit was given by the company to its workmen in the shape of allowances and other benefits. The learned counsel Shri C.V. Pawaskar argued that this tribunal should look into the entire wage packet or the wages basket of the different categories of workmen. In other words, the learned counsel tried to argue that it did not matter even if the pay scales of the workmen worked ridiculously low. The industrial adjudicator should be satisfied if the wage structure permitted the workman to earn monthly to the extent that his wants were satisfied. The argument is attractive but there is a fallacy in the argument that it over looks the fundamental principle of pay fixation that a person is entitled to get his pay or salary to extent he renders service. His entitlement to a reasonable scale is a right and there is correlative duty on the employer to pay it. This argument cannot be accepted for rejecting the demand for revision of pay scales. It is another matter that the wage packet may be relevant consideration for fixing the pay scales of each of seven categories of the workman. The demand of the Federation is that the basic pay scales of the seven categories be increased in the following manner. It is very clear that charter of demands does not require this tribunal to create new categories for fixing of the pay scales. The demand is limited to increase in the basic minimum wage of each categories and consequent changes in each category of pay scales. The demand made by the Federation is being reproduced here :

Sr. No.	Category	Grade
1	2	3
1.	Peon (all categories) Packer, Helper Watchman.	Rs. 135-15-210-20-310-25-435-30-585
2.	Sub-Clerk, Driver, Mechanic Electrician, Driver-cum-Peon. Peon I, Packer I, Helper I, Watchman I	Rs. 180-25-305-30-455-35-630-40-830
3.	General Clerk-Typist-cum-Clerk Stores Clerk, Telephone Operator, Accounts Clerk, Telex-cum-Telephone Operator, Driver/ Mechanic/Electrician/ Driver-cum-Peon I Senior Peon	Rs. 220-35-395-40-595-45-820-50-1010
4.	Receptionist-cum-telephone operator. Steno-typist, punch and card operator and Machine Operator, Senior Machine Operator, Senior Mechanic, Senior Driver, Senior Peon.	Rs. 240-45-465-50-715-55-990-60-1290
5.	Senior Clerk, Stenographer, Stores Keeper, Salesman, Comptist Draftsman. Senior Mechanic-I, Senior Drivers I.	Rs. 325-65-650-70-1000-75-1375-80-1775
6.	Correspondence Asstt. Senior Machine Operator, Jr. Sales Representative, Jr. Technical Asstt.	Rs. 325-65-650-70-1000-75-1375-80-1775
7.	Commercial Assistant, Senior Sales representative, Senior Technical Assistant.	Rs. 400-75-775-80-1155-85-1600-90-2050

45. From the above chart reproduced from the Demand No. 1 of Charter of Demands annexed to the order of reference and those prevalent which have been reproduced in this award in paragraph 39 Column No. 4 if we compare the minimum basic wages prevalent with those demanded by the Federation then the increase in minimum basic pay of Category No. 1 would be Rs. 135 — 35 = Rs. 100, for Category No. 2, Rs. 180 — Rs. 50 = Rs. 130, Category No. 3, Rs. 220 — Rs. 75 = Rs. 145 Category No. 4 Rs. 240 — Rs. 100 = Rs. 140 Category No. 5 Rs. 270 — Rs. 120 = Rs. 150 Category No. 6 Rs. 325 — Rs. 140 = Rs. 185 Category No. 7 Rs. 400 — Rs. 175 = Rs. 225.

46. The question if the workman are entitled to above pay scales depends upon several factors. It would be obvious that the factors which come into play for determination of wage structure of one industry may not apply to another industry of different nature. Even if the two industries be similar in nature, their wage structure may depend upon their organization, size, number of workmen and other employees, local units etc., and also the amount of investment and the profit earned by a company. A multinational industry earning profit in foreign currency may have an extra advantage of extra profit. An industry may be labour intensive or capital intensive. Therefore, it is incumbent upon this tribunal to state as far as possible from the evidence led by parties to outline the nature of industry that we are dealing with. The company as we have seen earlier claims to be a marketing company, it was foreign collaboration with known as Black and Decker of U.S.A. The company's witness Vinay Shahane in cross examination admitted as much as that company had purchased shares worth seven crores and fifty lakhs from the USA Company. He further admitted that formerly Bajaj Ventures Ltd. was a subsidiary company of the company. It ceased to be a subsidiary company in 2001-2002. It was not disputed that after resale of 50% of the share purchased from the USA company to a company not named by the witness the company known as Bajaj Ventures became joint share holding company. The witness further stated that Bajaj Electricals also marketed the goods manufactured by it. It manufactured fan at Matchwell factory. After 1-1-2003 the operation is shifted to Chhakan near Pune. The witness stated that the Bajaj Electricals was getting tubes and lamps manufactured from Hind Lamps at Shikohabad. The witness admitted that even Philips India got its lamps and tubes manufactured from the same company. The witness admitted that both Bajaj Electricals and Philips India were partners in the Hind Lamps. The inference drawn from the aforesaid facts is that it would not be accurate to say that the company is essentially a marketing company *i.e.* it manufactures fans at Chakkan. It gets the manufactured some goods at Shikohabad though another company of which it is a partner. The witness further admitted that company manufactured high mast shifts and transmission towers at Ranjangaon. Thus, the company does not appear to be a entirely marketing company. It is however, mainly a marketing company. The witness had further stated at the time of filing of the written statement. The total number of employees was 845 out of which 688 were not covered by the reference. Thus, through out India only 157 workmen were employed by the companies who could get the benefit of award if it was granted in favour of the workmen. This witness further stated that the strength of workmen is further reduced to 80 at time

of his deposition. From the above assertion of the witness a fair idea can be had regarding the size of the company. Its total employees are less than one thousand through out India. The employees belonging to category of workmen would be slightly more than 150 at the time of filing the written statement. It cannot be said that inorganization and structure this company is a mega company. It has already been noted that company does not have a complicated structure in the seven categories of workman. A close examination of the categories of workman reveals only a few posts like Electrician, Mechanic, Machine Operator, may require some kind of engineering skill. The other posts do not require of engineering skill. They may require some other kind of skill but not the kind of skill which requires scientific training. Even the persons requiring technical or engineering skill are not required to have it of a very high order. Thus, this tribunal comes to the conclusion that structurally and organizationally this company can be said to be an office oriented country where workmen doing desk job abound.

47. The workmen have brought on record the settlements of Philips India and Crompton Greaves Ltd. The evidence of Mr. Mushtaque Moulana is to the effect that the workman in 1992 got Rs. 1300/- per month and at per latest agreement it was Rs. 1300/- per month. However, the witness admitted that the company is manufacturing company. It manufactures industrial appliances as well as consumer products like tube lights, fans, water pumps or the electrical goods of similar in nature. Out of its 1600 crore turnover approximately 25% for consumer goods. The staff employed was 6000 in 2002. In 1997 it was 12000 and out of them 7000 would be members of union. This tribunal is of the view that Crompton Greaves company cannot be compared with the company in organization structure and number of employees and the settlements entered into by it with the daily rated workmen filed the witness of not much help in determining the wage structure. Only inference that may be drawn that a lowest category of workmen of Crompton Greaves company as that of the company may have earned Rs. 1800/- as minimum basic wage per month in year 2002 if he were a daily rated employee and Rs. 1300/- per month in the year 1997.

48. The workmen have examined Shri Sharad Shahtrabudhe who has filed and proved the memorandum of settlement of Philips India Ltd. from 1991. The witness agreed that Philips India Ltd. is a part of the Philips company of Holland. It is this part of a grant multinational company. That apart it manufacture goods like audio and video goods. It has further admitted by this witness that it also manufactured and sold other consumer items like. It had fewer manufacturing units in the country. i.e. 2 at Pune, 1 at Kalwa and Thane, and fourth one at Kolkata. He agreed that the Philips India is a multinational company. It had at time of giving evidence 750 employees who would be workmen. In the year 1997, the strength would be around 3000/-. Thus, the cross examination of this witness establishes the assertion of the company in the affidavit of Vinay Shashane that Philips India is not comparable to the company in question. It manufactures variety of consumer goods including audio and video systems. It has multinational tag. Its organization the structure and resources cannot be compared to the company.

49. Thus, this tribunal concludes that it would not be safe to consider the wage structure of either Philips India or Crompton Greaves for fixing the wages of the workmen of the company.

50. The next question is if this tribunal should reject the reference on the ground that the Federation has not produced evidence of the wage structure of the units of a comparable company. Shri C.V. Pavaskar argued that this Tribunal should. It is argued that this cannot change the wage structure of the company in absence of evidence regarding the wage structure of comparable company. This argument assumes that there are similar companies which can be compared with the company. There is no evidence led by the company to show that any other company marketing the electrical goods could be compared with the company. In absence of any evidence this tribunal cannot say that there are. The Federation has made attempt to place on record the evidence in respect of Philips India Ltd. and Crompton and Greaves. These companies too are selling electrical goods but they have been held by this tribunal that they cannot be compared with the company. The attempt cannot be said be tainted by any mala fide intention on the part of the Federation. However, reference cannot be rejected on the the ground of non existence of comparable industry. This tribunal on the other hand holds that there is no comparable industry so far as the organization and wage structure is concerned. The company appears to be unique in its structure and organization.

51. This tribunal has to answer the reference on the fact as they exist. It is well known that the rise in the prices of goods in general has direct relation to the pay scales. It has already been held that the pay scales did not change since 1974. On the other hand they were reduced for new employees from 19th April, 1984. It has been argued that the aforesaid circumstance in itself amongst others is sufficient for revision of pay scales. It cannot be disputed that from 1974 onwards there was considerable inflation. There was rise in prices of all kinds of goods including those sold by the company. Thus, the company must have gained so far it received the value of goods by marketing them. However, it did not pass a part of profit by voluntarily changing the pay scales of the workmen. They did not get the value of services rendered by them even in accordance with the law of market that the price of services should be

reflected in the pay scales. However, the company preferred to ridiculously low pay scales to the workmen. The tribunal however bound to examine the question of feasibility of increase in pay scales at the time the demand without being unduly hyped by the conduct of the company. The approach is factual and pragmatic and not sentimental or vindictive.

52. Shri Chidambaram has submitted that Vth Pay Commission constituted by the Central Government recommended the increase in the pay scales of the employees of the Central Govt. in respect of all the 34 categories of pay scales. It has been pointed out that Central Government had accepted the recommendations of the Vth Pay Commission as such. However, it had increased the pay scales in respected categories S1, S2, S3, S4, S5 and S13. It was argued that the pay scales of non profit making body like the Central Government may be considered in fixing the wages of the workmen of the company. It appears that Mr. Chidambaram correctly submitted that the pay scales arrived at by the Vth Pay Commission were arrived at the dearness allowance component at under level 1510 on 1-1-1996 + the Interim relief granted twice + 40% increase in the basic pay. The following chart gives the pay scale of the 34 grades as recommended by the Pay Commission and that accepted by the Govt.

Grade	Pay scales before 1-1-96 Rs.	Pay scales recommended by Vth Pay Commission Rs.	Pay scales adopted by the Govt. Rs.
1	2	3	4
S-1	750-12-870-14-940	2240-40-3200	2550-55-2660-60-3200
S-2	775-12-871-14-1025	2550-45-3540	2610-60-3150-65-3540
S-3	800-15-1010-20-1150	2650-50-4000	2650-65-3300-70-4400
S-4	825-15-900-20-1200	2750-55-4400	2750-70-3800-75-4400
S-5	950-20-1150-25-1500 1150-250-1500		
S-6	975-25-1150-30-1540	3200-85-4900	
	975-25-1150-30-1600		
S-7	1200-30-1440-30-1800	4000-100-6000	
	1200-30-1560-40-2040		
S-8	1300-30-1440-40-1800-50 2000	4500-125-7000	
	1400-40-1800-50-2300		
S-9	1400-40-1600-50-2300-60-2600	5000-150-8000	
	1600-50-2300-60-2660		
S-10	1640-60-2600-75-2900	5500-175-9000	
S-11	2000-60-2120	6500-200-6900	
S-12	2000-60-2300-75-3200 2000-60-2300-750-3200-3500	6500-200-10500	
S-13	2375-75-3200-100-3500 2375-75-3200-100-3500-125-3750	7000-225-11500	7450-225-11500
S-14	2500-4000 (Proposed new pre-revised scale)	7500-250-12000	

1	2	3	4
S-15	2200-75-2800-100-4000-2300-100-2800	8000-275-13500	
S-16	2630/- FIXED	9000/- FIXED	
S-17	2630-75-2780	9000-275-9550	
S-18	3150-100-3350	10325-325-10975	
S-19	3000-125-3625 3000-100-3500-125-4500 3000-100-3500-125-5000	10000-325-15200	
S-20	3200-100-3700-125-4700	10650-325-15850	
S-21	3700-150-4450 3700-125-4700-150-5000	12000-375-16500	
S-22	3950-125-4700-150-5000	12750-375-16500	
S-23	3700-125-4950-150-5700	12000-375-18000	
S-24	4100-125-4850-150-5300 4500-150-5700	14300-400-18300	
S-25	4800-150-5700	15100-400-18300	
S-26	5100-150-5700 5100-150-6150 5100-150-5700-200-6300	16400-450-20000	
S-27	5100-150-6300-200-6700	16400-450-20900	
S-28	4500-150-5700-200-7300	14300-450-22400	
S-29	5900-200-7300 5900-200-7300	18400-500-22400	
S-30	7300-100-7600	22400-525-24500	
S-31	7300-200-7500-250-8000	22400-600-26000	
S-32	7600/- FIXED 7600-100-8000	24050-650-26000	
S-33	8000/- FIXED	26000/- FIXED	
S-34	9000/- FIXED	30000/- FIXED	

53. It would appear from the above chart that person getting the minimum basic pay of Rs. 750/- on 1-1-96 was recommended to get Rs. 2,440/-. He is being paid Rs. 2,550/-. Thus, the recommendation of the Pay Commission was that the category S1 would get three times more salary. The same would be true of category No. S2, S3, S4, S5, S6 and S7. Roughly speaking the Pay Commission had held that there was had to revise pay scales to the extent 3 times in the case of lowest categories of the employees of the workmen. The recommendation of the Pay Commission are not for all time to come. The pay scales fixed by the Pay Commission to last till three was redetermination of pay scales by the next Pay Commission. The interim period has been take care of by providing for declaration of Dearness allowance. This tribunal is of the view that the demand of the Federation cannot be characterized as exhorbitant because wages have not been revised since 1974 at all. It has been argued vehemently on behalf of the company that this tribunal should apply the principle of industrial cum region formula to reject the demand of the Federation. This tribunal has already stated earlier that the company itself has been giving the uniform scale to all its workmen in the past.

54. It appears to this tribunal that the arguments

raised on behalf of the company for applying the region-cum-industry formula was made only with a view to thwart the just claims of the workmen of the company. It would be proper to recall again the stand taken up by the company that Philips India Ltd. and Crompton Greaves Ltd. are not comparable to the company. This tribunal has agreed with the stand of the company in the earlier part of this award. It would be in the fitness of the things to point out that the evidence led by the company itself has supports the conclusion of this tribunal. The company examined V.V. Shahane who stated that Philips India Ltd. manufactured and marketed similar goods as were marketed by the company. He further pointed out that the Philips India Ltd. also manufactured and marketed domestic apliances like Mixer Grinder, fans etc. However, unlike the company it manufactured electronic goods like Television sets, Musical systems, video systems and the like. It was a big company affiliated with the International Giant known as Philips company of Holland. Apart from the above fact it appears to this tribunal that Philips India is predominantly a manufacturing Company and its markets its own goods. The witness Shahane filed with his first affidavit certain documents. They are at pages 282, 283 and 284 of record. The contents of the aforesaid documents was not challenged in the cross examination. These documents show that expenditure and income of Philips India were also there is lot of difference between the company and Philips India Ltd. The number of workmen employed by the Philips India Ltd. was very high. In the connection of evidence of the General Manager (Personnel) Shri. Shastra buddhe shows that the Philips India Ltd. employed about 750 workmen. In the year 1997 they were 3,000. The number was reduced due to VRS scheme. The other company Crompton and Greaves Ltd. according to Shahane was engaged in manufacture and sale of goods. It manufacture lighting material and domestic appliances. It manufactured and sold industrial goods. The evidence of this witness was not challenged in cross examination. The evidence of witness Mustaqu Maulana Sheikh summoned by the Federation supported the evidence of Shahane. The documents filed with the affidavit of Shahane at pages 282 to 285 showed that the Cromption Greaves and company is far larger concern than the company income wise and also expenditure. Its manufacturer and markets 25% consumers goods only according evidence of Mustaqu Moulana Sheikh. The number of workmen naturally more that employed by the company on account of the fact that it is a manufacturing company. It was stated by this witness in the year 1997 the workers strength would be about 7,000 and total staff would be Rs. 12,000/-. These are some of the factors that come into pay for holding that the two companies are not comparable companies. It would be obvious that where the companies are mainly manufacturing companies than they have employ more workmen for the purpose of manufacture. The entire wage structure would be different and would not be comparable. In the case of French Motor Company Ltd. vs. their workmen (1962) 2 LLJ 744 at page 747 Wancho J. stated although the comparables companies need not be exactly alike but it would be proper to compare similar kind of concern with the other so that comparision should not be unreal. It was pointed out by way of example that it would not be safe to compare small conern with very large concern though they are in same line of business.In the case of Williams (India) (P) Ltd vs Its workmen (1962) 1 LLJ 302 at page 304 Gajendra-gadkar J and in the case of workmen of New Egerton Watt Mills Ltd. vs New E Gerton Mills Ltd (1969) II LLJ 782 at page 789 Shelat J have taken the same view. It is not in dispute that the company is an all India concern. It has been following the pattern of uniform wages. Even if we accept the claim made in the written statement in toto then also existence of uniform pay scales cannot be denied. The company has already stated that The settlements of units were identical with those entered by the company with the Federation. Thus the pay scales were same throught out. It is not case of the company that pay scales were at any time different unit wise. Thus, there was an uniformity. In this connection, it would not be out of place to recall the following observations of Wanchoo J while dealing with case of gratuity scheme, in the case Dunlop Rubber Co. (India) Ltd. vs its workmen 1959 II LLJ 826 at page 827. "***There is no doubt that in the case of all India concern it would be advisable to have uniform conditions of service through out India and if uniform conditions prevail in any such concern they should not be lightly changed.***"

His Lordship went on further to dilute when this desirable objective may give way to other considerations.

"At the same time it cannot be forgotten that industrial adjudication is based in this country, at least, on what is known as industry-cum-region basis and cases may arise when where it may be necessary in following this principle to enable changes even where the conditions of service of an all India concern is are uniform."

This tribunal finds that there is no material placed on record for departing from practice of having uniform scales. His Lordship went to add:

"Besides however, desirable uniformity may be in the case of all India concern the tribunal cannot abstain from seeing that fair conditions of service prevail in the industry with which it is concerned, therefore, which may be uniformly in force throughout India in the case of all India concern appears to be unfair and not in accord with prevailing conditions in such matters, it would be duty of the tribunal to make changes in the scheme to make it fair and bring it into line with the prevailing conditions in such

matters particularly in region in which the tribunal is functioning irrespective of the fact that the demand is made by small minority of workmen employed in one place out of many where all India concern covers on business".

This tribunal did not find any circumstance, and none was pointed out to it, for holding that there should be departure from time honoured practice in the company of having uniform conditions of service. Therefore, the question of rejection to claim of the Federation would not arise on the basis of specious reasoning that the principle of region-cum-industry has to be applied with closed eyes by an industrial adjudicator. The Supreme Court says that uniformity of service condition is a desirable objective and it should not be lightly interfered with. There is nothing on record to show that something unfair is being done to workmen or the industry by this Tribunal. The Federation does not think so. None of the units has approached this tribunal. The management of the company has not placed any fact on record showing that palpable injustice shall be done by adhering to uniform conditions of service.

55. This tribunal finds justice and fairness writ large onthe side of the Federation. It has been argued on behalf of the Federation that the pay scales were reduced by the company in violation of the statute. This tribunal does not consider it necesary to go into the question of illegality because in the settlement of 1984 the lower pay scales were accepted by the Federation itself. The new body cannot question its own decision, right or wrong. After all new body is also representing the Federation. Even otherwise, this particular aspect is not subject matter of reference. It has been argued on behalf of the workmen on the basis of rate fixed by the settlement of 1975 that the increase in pay scales for category No. 1 would be Rs. 135—Rs. 90 = Rs. 45, category No. 2, Rs. 180 — Rs. 120 = Rs. 60, Category No. 3 Rs. 220 — Rs. 145 = Rs. 75/- Category No. 4 Rs. 240 — Rs. 150 = Rs. 90, Category No. 5 Rs. 270 — Rs. 180 = Rs. 90, Category No. 6 Rs. 325 — Rs. 200 — Rs. 125 and category No. 7 Rs. 400 — Rs. 250 = Rs. 150. This increase in pay scales from 1974 onwards are to the extent of Rs. 45, Rs. 60/- Rs. 75, Rs. 90/- Rs. 90/- Rs. 125/- and Rs. 150/- progressively in each category. This argument is based on the big "if". The pay scales in reality were lowered. Therefore, in reality the increase in actual terms of money is not as indicated above. The company has not placed any material on record for satisfying this tribunal for factual justification for creating new pay scales which were reached. Even though, the argument of the Federation is not based on concrete reality as it existed on the date of demand, it is based on the facts as they existed at time of 1975 settlement. All that tribunal can say is that the federation is factually correct in its assertion that the increase as given above is much less if the pay scales of the company fixed in the year 1975 settlement were adhered to. Beyond this no further advantage can be deemed by the Federation.

56. This tribunal however, has based its conclusion not on the above argument but on the ground that pay scales of 7 categories needed revision from 1/1/1996, as demanded. The arrangement of the company as per existing situation shown by it in exhibit M 34, that no employee is receiving less than Rs. 90/- per month cannot be accepted. The pay scales are fixed not for the workmen who are in service. The pay scales are also fixed for those who join the services. The company has given the chart showing how much an individual is being paid but it has not shown the years he must have spent in the service of company. Such data cannct help this tribunal for forming any opinion in respect of the demand of revision of pay scales. The rise in prices since 1984 cannot be denied. The company has not conceded the claim of the workmen to the effect that it was now time to give increment in the pay scales. In its adamant attitude, it has not given any counter offer for making the task of this tribunal easier. However, this factor has no impact to the conclusion that the Federation on principle is entitled to claim a demand for higher pay scale. Thus the demand No. 1 of the Federation is accepted.

57. This takes us to Demand No. 2. It has been contended that the benefit of revision of pay scales should be reflected in giving the benefit to each workmen considering the length of his service. The demand of the Federation is that the proper method of giving that benefit would be to raise the basic wage of each workmen by Rs. 150/- and then fix the pay in nearest higher step of the scale. In the submission of the Federation it this is done then there would point to point fixation which shall mean that workman had started at the minimum scale of pay on the date of his appointment and fixed at the proper step in the pay scale. There is opposition to this demand on behalf of the company. It has been argued that this demand is nothing but a device to receive a higher salary by hook or crook.

58. It is well established that when the revised pay scales are declared then the industrial adjudicator must consider the impact of revised pay scales on the workmen who have put in number of years of service. If the pay scales are to be imposed as such then a workmen who has put in number of years of service may be placed in the same scale as a new entrant. It is thought proper to make some adjustment for the length of service has put in by a workman for fixing his pay in the new pay scale. The adjustment is known as fitment. After considering a number of cases on the point, cited by either party, it is concluded that it is the discretion of tribunal to decide on the basis of material on record that there is case for fitment. In the case of Hindustan Times vs., Their wo[illegible] (1963) I LLJ 108

K.C. Das Gupta J. of Supreme Court stated there should be some special circumstance for granting appropriate adjustment. Therefore, this tribunal is bound to ask the question if there is any special circumstance for granting the demand made by the workman. It has been argued on behalf of the workman that the fact that pay scales were not revised in itself is a circumstance. The other circumstance is that the pay scales were reduced. It appears to this tribunal by virtue of settlement of 1984 two kinds pay scales become prevalent. The workmen who were in service in year 1984 were governed by the settlement of 1975. There pay scales were not affected. The new entrants were fixed in the new pay scales.There is no clear evidence on record showing how many workmen were in service who are governed by the pay scales of settlement entered in the year 1975. There is no material to know how many workmen are serving under the reduced pay scale. It would be proper to notice that in the conmpany there was a system of pay scales with increments. Both the categories of the workmen must be getting the benefit of sliding pay scales. In the opinion of this tribunal the method suggested would not be conducive to similar treatment in this award in the matter of fitment. It would be proper to apply general rule that workman shall be fitted in new pay scales at the amount that they were drawing from the date of the new scales come in force. If there be no such stage in the new pay scale, at the next higher stage in the pay scale or at the stage in the new scale to which he will be entitled if he was deemed to start in the new scale and was given one increments every three years of service with maximum five increment, whichever is of two stages was higher.

59. The Demand No. 3 is related to stagnation increment. The Federation has argued that same benefit should be given to the workmen as is being given by the company. This demand has not been specifically opposed by the company in the written statment. This tribunal directs that the workmen who have reached at their maximum scale shall be given last drawn annual increment till they reach the age of superannuation. It is surprising that this demand was opposed during the argument as well as in written argument. However, the company itself was willing to agree to give, what it allegedly gave to the workmen at Mumbai. The workmen at Mumbai were given the stagnation to the extent granted as per exhibit W-50. Thus the demand No. 3 is granted to the extent indicated above.

60. The Demand No. 4 is for upgradation. The federation claims that the workman who have put in seven years of service should be given the next higher scale of pay and this process every 7 years of service. The demand is opposed by the company on the ground that it is the prerogative of the company to give promotion. During the argument, it was pointed out that the clause 2 of the settlement dated 24-1-2000 provided for automatic promotion after ten years of service. Indeed clause 2(b) of that settlement Exhibit W 50 provided as follows :

(a) . . . . . .

(b) All employees after completion of 10 years in any grade shall be promoted to the next higher grade.

The Federation points out that the learned counsel for the company had offered that company was ready to accept the terms of settlements entered by it with Mumbai union on 29-1-1996 and 24-1-2000. It was argued that Federation is demanding less that what was given to the Mumbai Union. It is not demanding promotion. It is demanding that these workmen who have served for 7 years shall get the pay scale at higher grade without any change in the work they are performing. Having considered this demand of automatic upgradation of pay scale, this tribunal is of the view this demand cannot be conceded. This demand militates against efficiency in work and promotes mediocrity. If a worker knew that is likely to get the new pay scale in the next grade then he may not compete with others. The workmen should earn promotion to higher grade by merit-cum-seniority. This is the normal rule. Since admittedly his is not demand relating to promotion, this tribunal had no occasion to consider the modes of promotion. The company had agreed with the Mumbai Union regarding promotion. Since this demand does not relate to promotion, it cannot be implemented on the basis of analogy.

61. Demand No. 5 is for the increase in Dearness compensatory allowance (hence forth DCA). It was demanded by the workmen that from 01-1-1996 the existing rates of DCA shall be revised. It shall be as follows :

Basic Pay	DCA
Upto first Rs. 200 per month	Rs. 2.25 per point.
For upto next Rs. 100 of p.m.	Further increase Rs. 1.00 per point.
For upto next Rs. 100/- p.m.	Rs. 0.75 per point.
For upto every subsequent Rs. 100 Per month	Rs. 0.50 per point

It was stated that the revised DCA rates shall be paid without deducting CPI numbers upto 1957-58 and 1963-64 in respect of different categories. It is not in dispute that the company had agreed to pay Rs. 1.25 per point over the consumer price Index (C.P.I. for short) for 1957-58 in all branches from 1st July 1985 for first Rs. 100 basic on the average rise of CPI 1957-1958; Thus slab of basic salary for lowest scale has been raised from Rs. 100/- to Rs. 200/-. The rate of increase is also increased to Rs. 2.25 per point. The demand of the federation be given in tabular form in order to understand its implication. If demands of the Federation are totally accepted then.

Upto Rs. 200 per month basic	Rs. 2.25 per point
From Rs. 201 to Rs. 301 basic	Rs. 3.25 per point
From Rs. 301 to Rs. 400 basic	Rs.4 per point
From Rs. 401 to Rs. 500 basic	Rs. 4.50 per point
From Rs. 501 to Rs. 600 basic	Rs. 5 per point
From Rs. 601 to Rs. 700 basic	Rs. 5.50 per point
From Rs. 701 to Rs. 800 basic	Rs. 6 per point
From Rs. 801 to Rs. 900 basic	Rs. 6.50 per point
From Rs. 901 to Rs. 1000 basic	Rs. 7 per point

Thus after the basic pay reaches Rs. 400/- the increase in DCA at rate of Rs. 0.50 per point over and above the rate of Rs. 4/- per point. The datum point on which the DCA was being paid is the average CPI for the year 1957-58. There is no demand for any change in the base year of CPI.

It has been pointed out on behalf of the company that in the year 1985 the company conceded increase to Rs. 1.25 per point instead of Rs. 100 for the first slab of Rs. 100/- as per settlement Ex W 18. If the minimum wage would deemed to be Rs. 35/- then there shall be 100% neurtralisation. For rest the old scheme continued. Therefore, the company was paying DCA on the basic wage as given below in tabular form.

Upto Rs. 100 per month	Rs. 1.25 per point rise in the average CPI for year 1957-58.
For Second Rs. 100 per Month	Rs. 0.50 per point rise over average CPI for the year 1957-58.
For third Rs. 100 per month	0.25 per point rise on over average CPI for the year 1957-58.
For Fourth Rs. 100 per month	Rs. 0.25 per point rise over the average CPI rise for the year 1957-58.
Over Rs. 400/- per month	DCA was same as applicable to an employee drawing Rs. 400/-

Form the above chart, it would be clear that there is ceiling against the increase in payment of DCA beyond the basic pay of Rs. 400/- per month. The changes as per demand of the workmen is that the for first Rs. 200/- the company should pay Rs. 2.25 per point. This was so because the Federation had sought increase in the pay scale of first category fom Rs. 35/ to Rs. 135/- According to existing system it would be Rs. 1.25 for first hundred and Rs. 1.75 for second hundred Rs. 2 for third hundred and Rs. 2.25 for fourth hundred. Thereafter, no increase in the D.C.A. The Federation wanted that the band beyond Rs. 400/- should also be lifted.

62. It has been argued on behalf of the company that if we take the basic pay of workmen at lowest scale to be Rs. 35/- per month then there was 100% neutralization of cost of living by payment of Rs. 0.35 per point (1949=100) and even, if Rs. 90/- per month were to be treated as the lowest slab in 1985 minimum wages then also more than 100% neutralization was achieved by payment of Rs. 1.25 per point. In either case the neutralization more than 100% neutralization. The question of change in the present system of payment of DCA did not arise. Shri C.V. Pawaskar learned counsel for the company argued vehemently that scheme of payment of Dearness, Compensatory Allowance was meant to supplement the income of the poorest of the poor so that they could cope up with the rise in the cost of living. The neutralization of cost of living to extent of full was meant for these workmen who were paid wages at subsistance level. It was argued that it was not possible to neutralize 100% cost of living. The National Commission of Labour had recommended 95% neutralization of cost of living for these persons who were employed in the non scheduled industries. A number of decisions of the Supreme Court were referred. A list of the decisions cited at the bar on this aspect of the matter is given herein below :—

(i) Clerks of Calcutta Tramways Co. Ltd. vs. Calcutta Tramways Co. Ltd. (1956) II LLJ 450 (SC).

(ii) CUKU Sahkari Mandal Ltd. VSG.S. Barot (1980) 40 FLR 458 = (1979)II LLJ 383.

(iii) Kamani Metal Alloys Ltd. vs Their Workmen (1967) II LLJ 55 (SC)

(iv) Hindustan Times New Delhi vs. Their Workmen (1963) I LLJ 108 (SC)

(v) Silk and Art Silk Mills Association Ltd. vs. Silk Mazdoor Sabha (1972) II LLJ 175 (SC)

(vi) Killick Nixon Ltd. vs. Killick and Allied Company's Employees Union (1975) II LLJ 53.

(vii) Bengal Chemical Pharmaceutical Works Ltd vs Their Workmen (SC) (1969) I LLJ 751.

(viii) Shivraj Fine Arts Litho works vs. State Industrial Court, Nagpur (1978) lab IC 828.

The argument of the company may be summarised by stating that concept of Dearness Allowance does not envisage within itself supplementing the wages of all the workmen for the entire cost of living. The persons who have better scale of salary can bear the burden of the rise in cost of living which is a natural off shoot of the process of development. Those who can afford should make sacrifices. This is their homage to development. It has been argued in all seriousness that the workmen of the company are the members of a privileged class and they should bear

the burden of development. It was argued that the payment of Dearness Allowance at Rs. 1.25 per point neutralized costs of living at the lowest stage by more than 100%. It was argued that the National Commission on labour had recommended 95% of neutralization as fair. The attention of the tribunal was drawn to paragraphs 7.21 to 7.22 of report of Bhoot lingam Committee. The report in those paragraphs emphasizes the requirement of sacrifices on the part of organized labour receiving emoluments above minimum wage as workers in the country in agricultural and unorganized sector were getting less than minimum wage. It was further pointed out in the same report Consumer Price Index included certain items which need not be compensated. It has been pointed out in that report further than organized sector employees receive some fringe benefits and that as the incomes grow the employee tend to spend less proportion of their wages on the essential items like food and more on other items. The degree of neutralization should therefore decline substantially in the higher pay brackets so that inflation is avoided. It has been pointed out otherwise that inflation shall grow and dearness allowance shall be chasing inflation.

63. This tribunal has considered the arguments of both the sides at the Bar. It has considered the several decisions cited at the Bar. It has also noted that the company at present is following the value per consumer index point system graded in four scales as indicated in the chart with a ceiling at Rs. 400/-. The grading in the scale shows that the rate per point declines after rise of incomes over Rs. 100/-. The Federation does not want to change the system but claims additional Dearness Allowance. In the opinion of this tribunal Dearness Allowance was a peculiar concept developed in this country for compensating the rise in prices of essential commodities. The National Commission for Labour pointed out the compensation so awarded for protecting the real wage began to be called as "Dearness Allowance". Initially it was called as 'Dear Food Allowance'. The Second World War in its train brought inflation at rapid speed. The price line began to go beyond control and wages shrunk in their purchasing power. The consequence was that there was industrial agitation requiring adjudication. The temporary expedient meant to meet the increase in price indeed because a permanent feature of the wage structure in this country. Thus Dearness Allowance has been legislatively recognized as a part of wages in the definition of wages under section 2 (rr) of the Act. The inclusive part of the definition expressly mentions "Dearness Allowance". Dearness Allowance is nothing but additional payment made by the employer to the employee so that he may tide over to a certain extent the rise in the cost of living. In the case of Hindustan Lever Ltd. Vs. B.N. Dongre 1995 Lab IC 1136 at page 1143 Justice A.M. Ahmadi stated as follows :

> "The concept of dearness allowance, the second most important element in a worker's wage plan next to the basic wage was introduced during Second World War to meet the increase in the cost of living caused by inflation. It was either linked to the costs of lviing index or was given by way of flat increases. When linked to the former, it was granted to all income groups at a flat rate or was a graded on a scale admissible to different income groups diminishing with the rise in income. Basically, the concept of dearness allowance was designed to combat inflation and protect real wages and therefore, it would appear that there should be cent per cent neutralization".

64. It is true that the various Committee, Commissions wage boards adjudications and decisions of Supreme Court and the High Courts have dealt with the problem of dearness allowance. There are number of observations made in various decisions but they are linked with the facts of a particulars case or the problem discussed. It is very difficult to reconcile the various decisions on the basis of pure logic. It should be remembered that the decisions rendered at particular time may not have same effect when we are dealing with the same problem at a higher stage of development. A statement relevant at a particular stage of economic development may become obsolete with the march of time. The observation of Justice Holimes of Supreme Court of USA. That life of law is not logic but experience" applies in greater degree to industrial adjudication in a developing country. This aspects was recognzied by Justice P.K. Goswame in the case of Killick Nixon Limited vs. Killick and Allies Companies Employees Union (supra) His Lordship observed at pages 55-56 "Like all changes in life and in continuous march in progress of society, the concept of DA also very change to take the wider range of commodities and services to make life worth living as far as practicable subject to compelling limitation of general interest. We recognize that the old definition of DA may not even serve the climate of new aspirations of the various classes of the vast country luxuries of yesterday may be comforts of today and necessities of tomorrow. Economic solution must reckon the turn abouts in the social urges because even the worm turns Industrial adjudication which has not limitation of the ordinary courts has to respond to the wheels of changing society and it may be possible to widen the scope of DA if serves the cause of general welfare. There may be no inexoperable rule tying down economic existence to the definitions of bygone days, if unsuitable or irrelevant in the context of time"

65. It is thus obvious that definitions of Dearness Allowance changes with the developmental process in course of time. The industrial adjudicator has to look into the core issues involving a particular industry and its workmen rather than approaching the problem in doctrinaire manner. The methods applied by the company in past have to be borne in mind because continuity is very much important to profit making enterprise. It is not the zeal of a crusader that is required. This tribunal therefore must notice that what was being done by the company in the past. The

question to be asked is if are the workmen justified in demanding the change. The pleadings in paragraph 2 of the written statement quoted earlier show that Dearness Compensatory Allowance is paid by the company on the consumer price Index Number of 1949 series for city where the branch of the company is situated. The C.P.I. number is pusblished by the Labour Bureau similar for a particular city. The company has treated the base year for DCA as 1957-58 upto category 1 to 6 and 1963-64 for category No. 7. It, therefore, deducts the average consumer price Index number for the year 1957-58 in case of first 6 categories and in case of category No. 7 the consumer price Index of 1963-64 as published by Simla Bureau for arriving at the appropriate figures for calculating DCA as per chart quoted in paragraph 62. The evidence on record led by the parties show that this is the system adopted by the company. The Federation has filed the affidavit of K.K. Vijayan, who is paragraph 17 of his affidavit has tried to say that there is no uniformity in the approach of the company. The witness asserted that company did not apply correct and consistent principle for arriving at the figure of DCA in case of workmen. His statement was that the company did not adhere to base year and the CPI number in all cases. For Mumbai and Ahmedabad Branch the CPI number of 1982 was converted into base year of 1926 by multiplying with suitable factor as suggested by Simla Labour Bureau. For the rest of branches it was 1957-58 was the base year for others. Thus, it was claimed that there was discimination even in the method calculating DCA for different branches and for different categories. The witness was not cross examined in this point. The other witness was T.K. Vasudev in chart by way of illustration how the company would calculate the Dearness Compensatory Allowance if it was assumed that consumer price Index was 2000. The witness was not questioned on this chart. The companies witness Kudtarkar was unable to say anything substantial and his cross examination shows that either he did not know or feigning ignorance about DCA. The effect of his affidavit has been nullified by the cross examination. His testimony his practically use less. The evidence other witness V.V. Shahne is sober. In paragraph 8 of his affidavit he has repeated the version of the company given in the written statement regarding the method of calculation of DA. In his cross examination the witness evaded the reply that prices prevalent on the day were likely to remain as in the year 1957-58. He evaded the reply to another question if the majority of the workmen had crossed rupees four hundred as their basic salary by saying that he could say so only after seeing the record. The documents filed by the Company are M18 and M19. The Exhibit M 18 refers to CPI number General applicable to industrial worker when base is 1982 = 100. It gives the state wide CPI numbers for Jan. and Feb., 2003. All India numbers are given below. It does not give number for Lucknow in Uttar Pradesh. However, for Guwahati the CPI number is 481 for January and 482 for February. The company also filed Exhibit M 19 for showing how it calculated DCA points from CPI 1982 = 100 for the month of April 2003. It converted the CPI numbers for its various cities to 1949 = 100 and then to 1957-58 for category Nos. 1 to 6 and 1963-64 to category No. 7. It is interesting to note that for Guwahati at serial No. 7 in Exhibit 18 the CPI 481 for January 2003 and 487 for Feb., 2003. However it shown to be zero in Exhibit M 19. In Exhibit M 19 the Price Index of Lucknow is shown to be zero because it is not mentioned in Exhibit M18. Bhubaneshwar has not been mentioned in Exhibit M19. In his cross examination Kudtarkar has stated that the workmen at Bhubaneshwar DA was calculated as per State Government published figures. This part of evidence appears to be inconclusive. The witness admitted that M19 is company's document. The company deliberately omitted to mention Bhubaneshwar in Exhibit M19. It is probable that the company is paying to the employees on the basis of All India Consumer Price Index shown in Exhibit M18. The evidence of Kudtarkar in absence of express plea regarding the payment of DA as per State Govt. published figures is rejected. It is not shown how the DA to workmen at Lucknow was calculated. Thus the evidence on record shows that there an element of truth in the complaint of the Federation that company does not pay DCA on uniform principles. At least the evidence on record is not self explanatory. It appears that in case of Bhubaneshwar or Lucknow some what arbitrary attitude is reflected. It has been pointed out that even in past when the minimum pay scale was reduced from Rs. 90/- to Rs. 35/- no attempt was made to compensate the workman by payment of Dearness Compensatory Allowance to the extent of loss in pay. It has been pointed out that the company cleverly introduced the lower pay scales without adequate compensatory DCA for the new incumbents. Those who were in service retained the old scale and their benefits. However, it has been conceded on behalf of the workmen that it would not be proper to rake past events but above mentioned facts were brought to the notice of the tribunal with a view to make demand of the workmen more transparent. The concept of cost of living itself is a dynamic concept. It is linked with the concept of fair wage. We have seen that a person shall be given a fair wage so that he could function at highest peak of efficiency. In this connection this is to be remembered that the fair wage must satisfy the material needs of the workmen and that of his family members so that they may function as proper citizens of the country and some thing more. We have seen that Justice P.K. Goswami had stated that changing circumstances may be considered for determining the cost of living. Therefore, it is fair question to ask that if the Tribunal is bound by that neutralization should be confined to the lowest rungs in the hierarchy of the company. The contention on behalf of the Federation is that this tribunal is not totally bound by former precedents for the reason an award has to be given on the facts and circumstance of particular case. The doctrine of precedents should not operate to hinder this

tribunal from formings it own opinion regarding what would be just and equitable. On the other hand, the learned counsel for the company sought to argue that under Article 141 of Constitution this tribunal is bound by the law declared by the Supreme Court. In the opinion of this tribunal it cannot be denied that law declared by Supreme Court is binding on this tribunal as it is binding on all the tribunals. However, if the concept on which the law was declared is subject to change in course of time then the law declared should be treated as related to concept of that time. If concept changes so is the law.

66. An old judicial precedent may not be of the same potency because of the circumstances have changed. It does not mean that the decisions of past should not be cited or they should not be read. They are still good law but are limited to the circumstances in which they were rendered. They cannot be read like Bible or any other religious text. The doctrine of precedents is essentially a doctrine of degrees. It is more important to see then what was said. This approach can be adopted without meaning any disrespect to any court. Let us take the case the case of Bengal Chemical and Pharmaceutical vs. its workmen (supra). In that case their lordships stated that "full neutralization is not normally given except to the lowest class of employees". Now we examine the facts of that case it would seen that the case related to an award deemed on 14th Jan. 1965. It was in respect of a charter of demand of 1962. The reference was made in the year 1962. The cost of living index considered by the court related to that period. Similar test have been accepted down in other cases too like Killick Nixon Ltd vs. Killick and Allied Companies Employees Union (Supra). However, the facts of this case too the Court was considering the demand of 1966. Moreover, the sentence that has been culled out by way of illustration itself is not conclusive. The use of words not normally given is a warning or caveat but did not preclude giving full neutralization if the cirumstances so warranted.

67. The observations made in the last paragraph were made only with a view to meet the argument made on behalf of the company that the last word has been said on the each aspect including the neutralization of wage and nothing had been done.

68. This tribunal, however, conscious of the fact that in the case of Killick Nixon Ltd. (supra) 14 point guide lines was sought to be given to the adjudicator. The first is the prevalent wage scales in the company. We have already seen that they have been revised. This tribunal notices the fact that the increase in basic minimum wage as per Demand No. 1 may give only meager relief to the workmen by way of increase in their basic wages. A look at the pay scales granted by this tribunal shall reveal that the rise in minimum pay from Rs. 35/- to Rs. 135/- in the pay scale as per demand No. 1 from 1-1-96 would not neutralize the rise in cost of living even up to the date of demand from 1-1-1996. This tribunal has found that there are no comparable industry. The companies like Crompton Greaves and Philips India are multinational companies. Their wage structure is not comparable.

69. We shall now consider in this paragraph some of the point that remain to be considered. We have seen that minimum scale of basic pay of Rs. 135/-, Rs. 180/-, Rs. 220/-, Rs. 240/-, Rs. 325/-, and Rs. 400/- for successive category of workmen would not be enough. The company paid DCA on the salary fixed in the old scale on the basis of CPI. The system of DCA has to be continued. It has been in vague in the company. The federation wants that since the mimimum pay scale is Rs. 135/- it would be proper to fix lowest scale of Rs. 200/- per month. There can be no objection on this count. The question is what should be the rate per point. It has been argued that earlier company is Rs. 1.25 per point on first hundered and second hundred it was paying Rs. 0.50 per point and thus in effect for Rs. 200/- it was paying Rs. 1.75/- per point per month. Now the demand is increased by 0.50 to make it Rs. 2.25 per point. The workman claim that thereafter the rate would be increased by Rs. 1 per point per month for next hundred Rs. 0.75 per month and next hundred Rs. 50/- per month on each successive hundred. The demand may be tabulated for the purpose of comparison.

Basic pay	D.C.A. Rate
Upto Rs. 200 p.m.	Rs. 2.25 per point
From Rs. 201 to Rs. 300 p.m.	Rs. 3.25 per point
From Rs. 301 to Rs. 400 p.m.	Rs. 4/- per point
From Rs. 401 to Rs. 500 p.m.	Rs. 4.50 per point
From Rs. 501 to Rs. 600 p.m.	Rs. 5/- per point
From Rs. 601 to Rs. 700 p.m.	Rs. 5.50 per point
From Rs. 701 to Rs. 800 p.m.	Rs. 6/- per point
From Rs. 801 to Rs. 900 p.m.	Rs. 6.50 per point
From Rs. 901 to Rs. 1000 p.m.	Rs. 7/- per point
And so on	

The Federation in its written agrument in paragraph 12 stated that the company was paying Dearness Compensatory allowance on the datum point above average of CPI for the year 1957-58. The Federation did not want to change either in the datum point or in base year. This concession on the part of Federation narrows the controversy. We have already seen how the compay's Exhibit M 18 read with exhibit M 19 determines the points for computing the D.C.A. Points for each city as per consumer price Index published by the Simla Bureau for a particular month. It is not necessary to distrub the method adopted by the company for determining DCA points regardidng those cities. Thus the principle of paying DCA on the basis of regional shall be maintained.

70. It may be pointed out that Crompton Greaves Ltd. gives 170 % to 210% Revised Textile Allownace plus a fixed sum by way of allowance. Revised Textile Allowance

is linked with consumer Price Index of Bombay Centre C (page 116 Evidence file showing DA from 1/1/1994). At page 140 of the same file we find a document showing figures of the Dearness allowance paid by that company for month. The workman who is earning between Rs., 200 to Rs.229.99 was getting DA of Rs. 7,465/-.in the year 2001 and Rs. 7,815. in the year of 2002. There increase in DA after rise in pay for each Rs. 25/- The Maximum rise is on pay scale of Rs. 900/- and above. It is Rs. 9,336/- for the year 2001 and Rs.9,836 for 2003. The Crompton Greaves Ltd.has not been held to be a comparable company by this tribunal. This tribunal has not taken out these figure of the Crompton and Greaves Ltd. for comparison. The capacity the structure as well as the wage structure of that company was treated as different by this tribunal. It would not be proper to treat the figures of the company for the purpose of Dearness Allowance for the reason that company follows a different system of payment of Dearness Allowance. This exercise has been done with a view to have look at the position of the Industry. It appears that Philips India Ltd. as not produced its evidence on this point owing to the fact that there was an industrial dispute pending. Thus it appears to this tribunal that looking to industry as whole, the economy of the country as a whole, and daily erosion of price line by rise in prices there is case of grant of increase in Dearness Assowance.

71. This tribunal is firmly of the view that the demand of the Federation for grant of revised rates after dearness allowance has to be granted. There is increase in the pay scales as this tribunal has accepted the demand in to. The vexed problem is that there is demand on behalf of the Federation to increase the rate upto 2.25 per point upto Rs.100. It is argued that it would be no use to start from Rs. 100/- as the lowest pay scale would be Rs.135/- per month. It argued that up to Rs.100/- as per existing scheme the scale up to Rs.100/-per month was rated at Rs.1.75 per point. The workman may be given an increase of Rs.0.50 per point with view to neutralize the cost of living at lowest ring of the pay scale. Having considered the argument advanced on behalf of the Federation as well as the company this tribunal is of the view that above demand should be accepted. They be given Rs.2.25 per point upto Rs.200 per month. The workman have demanded additional one rupee per point for pay scales between Rs. 201 and Rs. 300 per month. That is it would be Rs.3.25 per point. The tribunal holds that it would be proper to grant an increase between Rs. 201 and Rs.300. Thus between the pay scales of Rs.201 to Rs.300 the workman should be entitled to Rs.3/- per point between the pay scale of Rs.301 to Rs.400/- the workman shall get a further increase of Rs.0.50 i.e. Rs.3.50 per point. This tribunal thinks that it would not be proper to grant further increase in DCA. The reason is that Federation cannot be permitted to claim unlimited hike in DCA progressively. It is common sense that as man's basic pay increases his capacity to meet the exigencies of higer cost of living gains. At a higher level of pay the need for protection is less than at lower level. The idea behind the grant of Dearness Allowance is to compensate for increasing cost of living. The list of indices issued by Simla bureau have included in the cost of living indeed certain other items. It would be proper to direct that beyond Rs.500/- pay scale there shall be no further increase. Every person whose pay scale is beyond shall get the DA at the rate between Rs.401 and Rs.500/- Thus ceiling is against the increase in rate and not against the claim of DA. If we express the above conclusion in tabular form then it would be

Basic Pay	D.C.A.Rate
Upto Rs.200/- p.m.	Rs.2.25 per point
Between Rs.201 to Rs. 300 per month	Rs. 3 per point
Between Rs.301 to 400 per month	Rs.3.50 per point
Above Rs.400 per month	Rs.4.00 per point

72. This tribunal is also required to consider the financial burden on the company. Herein before, this tribunal did not say regarding the financial burden on the company when it gave the fixed pay scale. The real reason was this tribunal was of the view that the pay scales were Dearness Allowance cannot be separated. They have to be considered together as forming a single block so far as wages are concerned. Sometimes pay scales are increased by merging Dearness allowance because Dearness become the real wage in course of time. The Demand No.1 and Demand No.5 are financially inter linked. They are integrated demand. It was thought proper to discuss the question of financial burden at this point. The company had examined Shri.Kudtarkar as its witness. In his affidavit and in his cross examination this witness has stated that demand of the Federation is exhorbitant. The witness Shri. Yogesh Kudtarkar stated that total burden of all the demand would be over Rs.10 crores. However, this witness was not able to explain anything regarding Demand No. 1 and Demand No.5. It was for these witnesses demonstrate to this tribunal how the company shall be unable to bear the burden if this tribunal accepted the demand of the Federation. Shri.V. V.Shahane who filed the affidavit for the company had stated in paragraph 6 of his affidavit that all the demands on the company shall create unsustainable burden on the company. The witness filed two affidavits. One on 16-4-2003 and another on 16-6-2003. It was stated the company for running in loss for last two years. The current financial position for the year 2002 to 2003 was indicated. The company filed documents by created computer as M32 collectively. In the document M 32(1) it was stated that number of workman was 144 in jan. 1996. The total cost was Rs.110.82 lacs in Jan. 1996. In June 2003 it was reduced to 80 and total cost per annum was Rs.97.25 lacs. Thus the company had saved Rs.13.57 lacs which it was spending earlier on keeping these men in service. The document M32(2) giving the position of basic wages was

stated that out of the total workmen numbering 80, there were 42 employees who had reached less than Rs. 400 p.m. in the existing scale of salary. There were 6 workmen who were drawing basic wages of Rs.400 and 32 workmen were drawing above Rs. 400 per month. The M 32(5) gives the impact of charter of demands. In this document it has been tried to show that company shall suffer Rs. 1031-42 lacs in all if the 18 demands relating to monetary aspect were accepted. It was pointed out by Mr. Chidambaram that the item 13 and item No.18 dealt with gratuity. The item No.18 Gratuity arrears amounting to Rs.770 lakhs were added with a view to show inflated financial burden. If we deduct Rs. 770 lacs then even according to company the burden would be Rs.261.42 lacs. Moreover Mr. V. V. Shahane admitted in his cross examination that during the pendency of the reference the number of the employees were reduced. The company had not given an account how the reduction in cost was reflected in this document. The Exhibit M 32(5). The document M 32 (5) related the actual position at the time of the filing of the affidavit. There is another document exhibit 2 annexed to the written statement. This document stated the position as it existed on the date of filing of the written statement. In this document also an attempt has been made to show that the company shall suffer loss to the extent of Rs.1,030 crores. In this document too there is column showing the duty accrued as on date as per demand. This column shows that total expenditure on this count shall be Rs. 801.1 lakhs. Both these witnesses did not explain exactly how company claimed gratuity to the extent of Rs.770 lakhs. All they could say was that the M32(5) was given by the Finance Deptt. of the company. It is obvious that merely a document is computer generated it does not becomes true. The company was giving evidence before the tribunal. It should have made an attempt to lead cogent evidence so that this tribunal could express its belief as to correctness of the assertions made in the documents relied upon by them. It is therefore, very difficult for this tribunal to accept the assertions made by the document Ex M 32(5). There appears to be attempt to inflate the expenditure without there being any sound base for dojng so. Nevertheless this tribunal accepts the version of the company that there was probability of additional expenditure of Rs.2.59 lacs per annum by grant of pay scale as per Demand No. 1. It appears that the claim of the company that it would be burdened with financial loss to the extent of Rs.82.33 lacs per year, if the Demand No.5 is accepted in toto; It is not possible to ascertain this figure because the evidence of both the witnesses does not throw any light. It is not possible to ascertain the claim of the company exactly for the reason the witnesses did not know how these figures were arrived at. However, this tribunal presumes that the company must have calculated the maximum money that it shall be liable to pay if the entire demand of the Federation in respect of D.C.A. were to be accepted by the tribunal. This tribunal therefore, takes that even according to company the maximum cost would be Rs.82.33 lakhs. This amount shall be less that is estimated by the company because this tribunal has not accepted the demand of the workman in full. It is obvious that 42 + 6 workmen shall get maximum DA. The rest of the 32 wrokmen shall get DA in accordance with the pay scale in which they are fixed. Even so this tribunal assumes that the maximum cost to would be Rs.82.33 lakhs per year. The question is if the company can bear the additional expenditure in pay and DA and increased pay scale. It is not in dispute that the company is in existence since last 65 years. It started journey in the year 1983. It can, therefore, be inferred that company is well entrenched. Indeed the name of the company is well known and it is regarded as one of the leading companies of the country in the field of electrical and consumer goods. It is also not in dispute that it has foreign collaboration with the Black and Decker and General Electric Company of U.S.A. The country and its people have progressed considerably since 1947. The population has also grown. Fifty years of planning and sacrifice of past generation has began to bear fruit. Gradually a new class has begun to emerge in the country which is economically sound to buy the consumer goods and durables provided by the company. With the progress of the nation the demand for the electrical goods is bound to grow. Indeed the luxuries of yesterdays are likely to become necessities for the growing urbanized middle class. Thus the prospects of the industry are good in future. It is not in dispute that in past the company was making profits. The company has given an account of its profit from 95-96 to 2002-2003 in tabular form. The Annual report of 8 years between 1991-92 to 1998-99 have also been placed on record. The company showed in its Annual reports for the years aforesaid. They give the following figures for gross profit earned without tax and depreciation. For years 1991-92 Rs.504.16 lakhs, for the year 1992-93 Rs.367.38 lakhs for the year 1993-94 Rs. 444.32 lakhs for the year 1994-95 Rs.533.44 lakhs. For the year 1995-96 Rs.652 lakhs, for the year 1996-97 Rs.1,028 lakhs for the year 1997-98 Rs.1.278 lakhs and for the year 1998-1999 Rs. 1,174.35 lakhs. The comapny showed in its annual report 1991-1992 as on 31-3-1992 that it had share capital 1,92.06 lakhs. It had reserves worth Rs.17,26.23 lakhs. If we examine the Annual report of 1992-1993, 1993-1994, 1994-1995, then we shall find share capital to be constant at Rs. 1,92,.06 lacs. But reserve grew every year in making them worth Rs.42,23.84 lacs. Even thereafter there is growth in the reserve capital to the extent of Rs.6,200.41 lacs in 1995-96 Rs.65,58.38 lacs in the year 1996-1997, Rs.69,27.96 lacs in the year 1997-98 and Rs.72,08.75 lacs in the year 1998-1999. However, the share capital was shown to have declined in the annual report of 1995-1996 to Rs. 288.10 lacs due to investment in the portion of seen in the Black and Decker. The share capital of 2,88.10 lacs continued to be same in 1996-1997. It rose to Rs. 4,34.14 lacs in 1997-1998 and to Rs.1432.14 lacs in the year 1998-1999. The total of share capital on 31st March, 1999 was Rs. 72,08.75 lacs.

It is not disputed that the company earned from the industrial activity during all these years and it was worth Rs. 86,40.89 lacs in 1998-1999. It is well established that while weighing the liability of comanny for payment of wages the tribunal is required to consider the gross profit of the company because the wages that have to be paid to workmen without computing any other liability. It has been held in Ahmedabad Mill Owners Association Vs. Textile Labour Association (1966) 1 LLJ I that the wages are the first charge on the gross income of the industry. All other liabilities take place thereafter. Therefore, this tribunal shall note only the gross profits. The company has showed profits continuously in its balance sheet filed for 1991-1992 to 1998-1999. The annual report of 1999-2000 onwards has not been filed. It has been shown in tabular form for the period 2001-2002, 2002-2003 loss shown; where as for 2000-2001, 1999-2000, 1998-1999, 1997-1998, 1996-1997 and 1995-1996 it is not disputed that the company made profit. The loss for the year 2001-2002 is shown to be 932 lacs and for the year 2002-2003 is shown to be Rs. 936 lacs. In 1995-1996, the net profit after taxation is 307 lacs, 1996-1997 507 lacs., 1997-1998 708 lacs, 1998-1999 535 lacs, 1999-2000 139 lacs and 2000-2001 its shown to 284 lacs. The net loss after profit is only for last two years *i.e.* 2001-2002 and 2002-2003. These figures exclude extraneous profits of the company. The Annexure 2 filed along with Exhibit M 33 also confirms that company had received profits indicated in that document in crores. The burden of proof was on the company to prove that these two demands for increase in pay scale and the Dearness Compensatory Allowance could not be met with by it. In order to prove the aforesaid circumstance the company was bound to prove that not a financial position of the company has for over the year had gone so bad that the burden of increased pay and the Dearness Compensatory Allowance was unbearable. The company cannot take advantage of temporary decline in profit or fortutious or contingent situation for asserting that fortunes of the company are in doledrums. It was for the company examine proper witnesses who would show that company shall continue to suffer loss and it is not likely to recover for a onsiderable period. Consequently, the demand should not be accepted. There is no clinching evidence on record for showing that financial position of the company has depleted so much that it shall not able to bear the burden of increased pay scale as well as the demand of the federation regarding increase in dearness allowance with effect from 1-1-1996.

73. The conclusion is that the demand of the federation so far as relates to grant of Dearness Compensatory Allowance is partially accepted. The Company shall pay D.C.A. on the basis of Consumer Price Index issued by the Simla Labour Bureau. The calculation shall be on the base year of 1957-1958. This is done with view avoid discreminatory treatment. The company is prohibited from using base year for category No. 1 to category No. VII workmen on the basis of base year as 1962-63. It is further directed that the company shall calculated the D.C.A for each workmen on the basis of his basic pay as modified by this tribunal by change of pay scale. In computing the Dearness Compensatory Allownance, the company shall take in consideration the Consumer Price Index published by Simla Labour Bureau for the area where the branch of company is situated for granting a workman DCA. If there is no consumer price Index available for a particular city where the branch of company is situated there company shall apply. All India consumer price index since system of payment of D.C.A. in accordance with the posting of the workman in particular branch is not disturbed. Thus the DCA shall be payable according to industry-cum-region formula. The rate at which the DCA shall be calculated has already been indicated in paragraph 71 above. There is no need to repeat that again. There shall be ceiling after Rs. 400/-.

74. The next demand is for payment of increased House Rent Allowance for all the workmen. The rate of House Rent Allowance paid by the company to the workman drawing Rs. 199/- basic is to the extent of Rs.470/- per month between 200 to 449, it is Rs. 520/- per month. The workmen drawing more than Rs. 20/- are given Rs. 660/- per month. This rate uniform throughout the country. The aforesaid rate is governed by the settlement dated 28-6-1992 Exhibit W 21. It has been argued that company had progressively increased the rent from time to time. Ex W 13, Ex W 15, Ex W 16, Ex W 18 and Ex W 21 are the documents showing progressive increase. The question that has to be asked is of this demand is justified. The rate of rent fixed by settlement of 1992 should be maintained as such or should it be increased. The evidence on record is that company has increased the rate so far as Mumbai Union is concerned on 29-1-1996 and then on 24-1-2000 by their own settlements by Exhibit W 50 and Exhibit M 23 respectively. It has also been argued that there is evidence on record to suggest that house rent of the executives and officers of the company has been considerably increased. The company entered into settlement with Wardha Union 15-4-1996 (Exhibit 6 to the written statement) and was filed the increased rate of rent to the officer with effect from June 27, 1997 (Exhibit 6 to the written statement). A similar settlement was reached with the Pune Union which was entered during the pendency of the reference. The learned counsel for the company Mr. Pawaskar had stated during the course of argument that company had no objection if the tribunal accepted the benefit given to all workmen as per two settlements entered into by the company with Mumbai Union. Of course, the learned counsel never intended that two settlements should be accepted in part. It was a package deal for the entire demands. Therefore, it would not be proper to implement the two settlements on the ground of concession made by Shri. C.V. Pawaskar. Nevertheless there

is no dispute that rate of House Rent Allowance was the same throughout the country. This fact is confined by the fact that the company granted the same rate of House Rent allowance to Wardha Union as per settlement dated 15-4-1996 (Exhibit 6 to written statement) as was given by settlement dated 29/1/96 (Exhibit W 50). Thus, the agreement entered into in the year 1996 show that the demand increase in House rent allowance was accepted by the company. A further increase in the House rent was accepted by the company by settlement dated 24/1/2000 Exhibit M 25. Therefore, this tribunal holds that all the workman shall be entitled to increase House Rent allowance in three slabs only and not in four slabs. Between 1/1/96 to 31/12/2000 the workman shall be entitled to house rent as follows :

Basic Salary Slab	Minimum HRA per month
Upto Rs. 199 p.m.	Rs. 620/-
Upto 200 p.m. to 449 pm.	Rs. 670/-
Upto Rs.449/- p.m. and above	Rs. 770/-

From 1/1/2000 the House Rent Allowance shall be increased as follows :

Basic salary slab	Minimum rate of HRA per month
Upto Rs. 199 p.m.	Rs. 750/-
Rs. 200 to 449 p.m.	Rs. 800/-
Rs. 450 p.m. and upwards	Rs. 900/-

The company shall calculate the arrears of HRA due to each workman from 1/1/1996 at he rate shown in the first table upto 31/12/2000 and thereafter from 1/1/2000 to date of payment of arrears as per second table and pay him accordingly. The company shall then continue to pay HRA at rate fixed from 1/1/2000 till it is altered by settlement Award or Order. It is further directed that other terms and conditions mentioned in the settlement dated 28/6/1992 Exhibit W 21 in respect of House rent allowance shall be deemed to be incorporated in this award and treated as part and parcel of this award. This tribunal finds that the company is capable of bearing the House rent allowance. The arrears that workmen shall be entitled will be given to them after deducting the House rent allowance already received by the workmen in the past.

75. The Federation has made a demand for Leave travel concession which is paid by the Govt. and Public Sector Employees. In the opinion of this tribunal there is no reason to change the existing system of Leave Travel Allowance. The existing system of payment of certain percentages of Annual basic wage +DA + special pay + personal pay is in the system. As per settlement with the Mumbai the rate was granted at 8.33%. Therefore, it is directed that in future that company shall pay Leave Travel Allowance at rate of 8.33% instead 6%. Accordingly, this demand is disposed of.

76. The Federation states that system of Reimbursement of Medical Expenses adapted by the company by paying 7% of basic wage + dearness allowance + personal pay + special pay is not adequate. The demand is that medical expense should be 15% of total salary. It is argued that the medicines have become costlier because the Govt. has lifted its price control. Having considered the argument of parties this tribunal is of the view that it is not possible for the employer to give total relief. The workman cannot separate the rise in prices generally from the rise in prices of other items. It has been pointed out by the company that the workman and his spouse are covered by Group Mediclaim Policy. In case of an unmarried employee either of the parents is covered by the policy. The company is, however, directed to pay at rate 8.33 % on basic pay + Dearness Allowance + Special Pay + Personal Pay as was being done previously. This part of the award shall be effective only from the day the award comes into force.

77. There is demand for Education Allowance. This altogether a new demand made by the Federation since it is a new demand the Federation should have placed enough material on record for showing to what extent the workmen expect the company to share the burden of educating the children of workmen. Not being a model employer, the company denies that it owes any responsibility toward the kith and kin of the workmen. The Federation does not dispute that Supreme Court had held in the case of Hindustan Aeronautics vs. the Workmen and others (1975) II LLJ 336 that education allowance cannot be claimed under a separate head. It was held that a proper wage structure should take care of the problem of education. The argument raised on behalf of the Federation is that after privatization as a creed in every field, situation has considerably changed. Despite the Directive principles of the Constitution as given in Article 45, the education is not free upto age of fourteen. On the other hand the State is ceasing to govern as a welfare state in the name of privatization and globalization. The Govt. School, the Municipal Schools and Panchayat Schools have ceased to function. The education itself has become an activity of commerce. Under these circumstance, the law laid down by Supreme Court is no longer efficacious or suitable to the industrial circumstances as it exists today. This tribunal is being asked by the Federation to take another look on the earlier view in the changed circumstances. However, there must be material produced on record for saying that the facts reveal that circumstances have changed. The material should have been placed on record empowering the Tribunal to have a second look. Nothing of this sort has been done. This tribunal is therefore unable to help the Federation in this matter. The demand for education allowance is rejected.

78. The next demand is for reimbursement of periodicals news papers. This tribunal is of the view that it is not possible to give this benefit to the workmen. In this few persons read papers and periodicals for entertainment or information. It is almost non existent in the workmen. Moreover, after television has spread its net work in the

country reading habit has lost the battle. Ever so, those who want to read papers or a periodical can always do so from their own income. This tribunal, therefore, rejects the demand.

79. The workman have set up a demand for reimbursement of expenses incurred by them for medical check up every year once. This demand has been opposed by the company stating that it is the duty of the workman to get themselves examined at their own expense. It is stated that the company had made a provision for the treatment of the sick. It has been argued on behalf of the Federation that facility demanded by it is being availed of by the Officers, Managers, Executives and Directors. These persons can afford to pay the expenses for medical check up. There is substance in the contention of the Federation. The unionized workmen should be given this facility with a view to remove discrimination and heart burning. It may be noticed that the medical check up every year may be preventive in nature. If a disease is discovered earlier and is prevented in time then it may be less expensive to the company. Looking to the fact that the total number of workmen has been reduced to 80, the company is not likely to incur a financial burden which cannot be paid by it. Accordingly, it is directed that the company shall from the date of commencement of the award permit the workman for one medical check up in a calendar year from a medical hospital institution recognized by it in the concerned establishment. It shall reimburse the workman of the expense incurred by the workmen on proof of the fact that the concerned workman had actually undergone a medical check up on production of necessary bills or receipts.

80. The next demand of the workman is that the company is regarding Health Insurance Scheme of the children of the workmen. It is urged that the company provides for a Mediclaim policy for a workman and his spouse. This facility should be extended to the children of the workmen. In the written statement at page running page 86 the company virtually conceded demand by stating that it did not want any comment on the statement of claim on demand aforesaid stated in running page 32-33 of the Statement of Claim. However, during the argument this demand was opposed stating that the company was not responsible for upkeep of the children. Looking to the social good involved in the demand this tribunal is of the view that this demand should be granted. After the commencement of the award, the company shall take steps to provide Mediclaim policy to the children of its workmen.

81. The next demand is grant for casual leave for 15 days in a year instead of 12 days in a year. There appears to be no justification for grant of 15 days casual leave. It is not accepted. Similarly, there is no justification for grant of 30 days earned leave in a year. The prese[illegible]em of granting of 24 days of earned leave in a yea[illegible]kmen serving below 7 years and 27 days for thos[illegible]ho have served upto 7 years or above appears to be in order. However, this tribunal is of the view that the grant of 8 days sick leave in a year is inadequate. It should be increased to 15 days. Thus, Demand No. 13 regarding sick leave is accepted partially and the rest of the demand is not accepted.

82. It is stated that the workman are entitled to accumulate 300 days of earned leave and 150 days of sick leave during the entire service. The demand is that the ceiling on accumulated leave for 300 days on earned leave should be raised to 360 days. This tribunal has already rejected the demand for increasing the number of days in respect of earned leave. Consequently, the ceiling for accumulation of earned leave upto 300 days appears to be proper. However, it would be proper to raise ceiling on sick leave from 150 days to 250 days during the entire service of the workmen.

83. The demand regarding encashment of leave is related to accumulation of leave and the leave benefits to which a workman is entitled. It is argued on behalf of the Federation that the idea behind the encashment of leave is that a workman had served the institution without availing the leave to which he was entitled as of right. By not claiming it he has given the benefit of services to the institution establishment or the company for the period he had served. The employer bore a duty to a workman who had loyally served him by granting monetary benefits. The demand of the Federation is for changing the existing system of grant encashment of leave. It is admitted that there is system of encashment of leave in the company. It is argued that a workman at present is entitled to encashment of leave to the extent he took earned leave days. The demand is that workmen should be permitted to encashment of earned leave once in a year irrespective of the fact whether he has taken leave or not, and that the sick leave should be allowed to be encashed at the end of tenure of service. It has been argued that this facility would be beneficial to the company because the workman shall not take the earned leave or sick leave only when it would be necessary. They shall thereby adding to the production of the company. On the other hand, it has been argued that the idea of giving earned leave to a workman is to give him an off time for rest and recuperation from mundane work. It is argued that if we allow the workmen to convert the facility of leave into cash, then we shall be pandering to their greed and thereby lowering their capacity to work generally. Having considered the argument of both the sides carefully, this tribunal is of the opinion that there is no reason to change the existing system. This tribunal cannot permit encashment of sick leave. There appears to be no serious flaw in the matter of encashment of casual leave prevalent in the company.

84. The Federation have stated that company pays to workmen gratuity as per payment of Gratuity Act. It calculates gratuity on the basis of terminal salary/wages of 15 days. The argument is that the payment of Gratuity Act

provided a minimum. It did not prohibit the employers from granting more than the minimum. The demand for determining the quantum of gratuity the salary/wages drawn by the workmen should be 30 days at time of termination of his salary instead of 15 days. It is argued that the demand is justifiable because the company itself has granted the increase in gratuity of the workmen of the officers, managers and executives on that basis since 1993. This action on the part of the company was voluntary. It has been argued that after the introduction of scheme the workmen are getting 50% of the gratuity to which officers, managers and executive class is entitled. It has been forcefully argued that the highly paid salaried staff of the company is given double benefit. The gratuity is paid to them at higher salary. It is given at twice the rate that of a workman. It is argued that there is felt need of the workman that they should be given gratuity at a higher rate. It is not disputed by the learned counsel for the company that the payment of Gratuity Act fixes the minimum gratuity under Sub-section (3) of Section 4. The Sub-section (5) of Section 4 of the Act expressly confers right on an employee to receive better terms of a gratuity under any award, agreement or contract with the employer. It has been held by the Madhya Pradesh High Court in the case of the Manager, East Donger Ehikhli colliery of Western coal fields Vs.D.D. Dube and others 1998 (78) FLR 649 that the terms granted to the workmen as per National Coal Wage Agreement shall prevail over those given under the payment of Gratuity Act for the reason that they are better. The competency of this tribunal to adjudicate upon this dispute is not under challenge. However, it is being argued that this tribunal cannot consider that the person in higher rank are given better conditions. The evidence on record discloses that there are 548 employees who would be ranked as Officer, Executives, Managers etc. It is not in dispute that they get gratuity at a higher rate. There is not denial of the fact that the gratuity of the aforesaid officer calculated on the basis of 30 days terminal wages. Therefore, the straight forward question is if the demand for increased gratuity on the basis of 60 days terminal wages be reduced to 30 days terminal wages as is being given to the officers. Shri Kudtartkar admitted that the number of workmen is only 80. This tribunal, therefore, holds that it would be proper to change the basis of the calculation of gratuity in respect of workmen of the company for keeping it on par with that of the officers. The decision of the Bombay High Court in respect of UBS Publishers and Distributors Ltd. Vs. Industrial workers 1997 I CLR page 1155 is regarding the production of document. It has no bearing on the points involved in this case. This tribunal is further of the view that by giving additional benefit of 15 days to each workmen for the purpose of calculation of gratuity there shall not be any extra ordinary burden on the finances of the company. This tribunal has already noted that the company has shown profits for considerable periods. The Item No. 13 Exhibit M 32 (5) shows that gratuity would be Rs. 28.27 lacs. As already held that the witnesses examined by the company was unable to explain this figure. Even the figures of arrears Rs. 770.60 lacs were not made explicable in Item 18. Both the witnesses Shri Kudtarkar and Shri V.V. Shahane were unable to explain the figures. In absence of any person entering the witness box on behalf of the Finance Deptt. of the company, the only conclusion that can be drawn is the figures are not accurate. This tribunal finds that amount of gratuity becomes only when a workmen superannuates or his services are terminated for any other reason. This amount does not become due for all the workmen at the same time. The contingency of termination of service would determine actual payment made by the company. The workmen are 80 in number. They shall be claiming at gratuity amount at one and the same time. Therefore, the company shall be able to bear the financial burden especially when in the years of its loss the balance sheet of the company discloses the reserve the extent of Rs. 2459.42 lacs. Accordingly, it is directed that in the gratuity scheme of the company, the following modifications shall be made. The company shall pay gratuity to a workman at the rate of thirty days wages based on the rate of wages last drawn by the workman concerned. This direction shall be applicable from the date of commencement of Award under the Act.

85. The Federation has made a demand for scheme of pension. The company did not pay pension to the workmen. A pension is a periodic payment of sum as a measure of security to a person who has ceased to be in service due to old age, sickness and disability. This concept has another dimension when the family of the workmen is provided with pension on the death of the workman. There is no scheme of pension for the workman in the company. No evidence has been led to show that a similarly situated employer like the company has provided its workers with pension. It is not in dispute that workman gets contribution from the compnay for the provident fund under the provisions of Employees Provident Funds Act and Miscellaneous Provisions Act. The Federation rightly contends that contribution made by the employer towards the provident fund cannot be equated with pension. There is no legislative compulsion upon the employer to frame a pension scheme. As the things stand, the introduction of pension scheme depends upon the will of employer. This tribunal after weighing the pros and cons of the proposed demand of pension scheme is of the view that it would not be proper to grant an award and impose a recurring financial burden under new head npon the compnay. However, if the company chooses to grant benefit of pension it would be welcomed by the workmen. This triubunal is of the view that instead of adjudicatory compulsion, it would be proper to advi[redacted] the parties to create a scheme of pension by mut[redacted]scussing it. Beyond the above observation no relief can be granted to the Federation under this demand.

86. Death-cum-retirement benefit is another demand made by the Federation. It is new demand which is not in vogue in the company. It is argued that the company does not pay to workmen any sum at the time of retirement or death except a small contriubtion to the provident fund. The workman require lot of money for the marriage of children and for housing. They have to withdraw sum from the provident fund. The consequence is very little is left with them. Therefore, it has beren vehemently submitted on behalf of the Federation that this tribunal should direct the company to pay a fixed sum at time of retirement or the death of the employee. This demand is also opposed by the company on the ground that no comparable company paying this allowance. Having considered the arguments on both sides and the money that the company may be required to pay at this juncture this tribunal holds that it not propitious time to burden the company with new liabilities. It is therefore, advised that Federation is free to raise this demand in future.

87. The Federation has demanded that the age of the retirement should be raised from 58 to 65. It has been argued that company selectively retired workman only. The age of retirement of Directors of the Company is above 70 years. It has been pointed out that the company has not considered that the average life has of the human beings has increased. Therefore, it would be proper to raise the age of retirement to 65 years. This demand was opposed by the Company. This tribunal is of the view that the workmen cannot claim same yard stick in respect of retirement as Managers, Executives and Directors. The nature of work performed by the workmen is not identical. By increasing the age of retirement the right of company to employ new persons is postponed. Moreover, by increasing the age of retirement generally the opportunities of giving new employment to unemployed youth is lost. The company is free to give re-employment to a workman who has been an asset to the company and likely to be so in future.

88. The Federation has raised a demand that the son or daughter of a workman should be employed at the time of retirement or upon the death of the workman. this in other words is demand for preferential treatment. It has been argued that the workmen do not get the benefit but the officer, executives and other manage to push in their kith and kin into the service of the company. This demand is opposed by the compnay. This tribunal is of the view that it is not possible to give an award in favour of Federation by accepting aforesaid demand. The recruitment of a workman is geared to appointment of the post among the several applicant for a particular occupation. The suitability of a new employee cannot be super imposed on the employer. No person can claim a particular job on account of birth. However, when other things are equal. Then the employer is bound to prefer a near relative of an employee simply because he known better. All these are matters of value judgement. They cannot be imposed on the company by way of an award.

The Federation has made the following demands.

(a) All temporary employees should be confiremed after three months service. Let us take this demand first. The demand is for automatic confirmation after three months of service. It has been urged that the workmen are recruited for three months for a job which is of permanent nature. After three months another workman is appointed for three months in the same job. He too is discharged. Thus an unfair labour practice is adopted by the company. The Federation claims that this practice can be given a go by making all those workmen permanent after he has worked for three months. In the opinion of this tribunal such prayer cannot be allowed on the assumption that unfair practice is adopted by the company as a matter practice in each case. It is the right of an employer to confirm an efficient person and weed out the inefficient. This tribunal cannot make the process of judgement time bound upto three months by way of this award on the assumption that the company is acting malafide because it has done so in the case of a Telephone Officer as per Ex W 24. It would be better for the Federation to raise individual industrial dispsute in a given case rather than to claim a generally automatic confirmation.

(b) The second demand is in respect of drivers. It is demanded all the drivers who are driving the vehicles belonging to the company for a period of six months contnuously should be made permanent. It is alleged that these drivers are the employees of the company but they are shown as employees of the managers who are reimbursed by the compnay for the wages paid to drivers. The drivers have been shown in Ex. W-48. It is alleged that uniform is determined by the company Exhibit W 17. The reimbursement is made as per Exhibit W 46 and the annual increment paid as per company's directions Ex- W 46. This demand is hotly contested by the company saying that the drivers are not employed by the company. In the opinion of this tribunal such a general demand cannot be granted. The learned counsel for the company has brought to the notice of this tribunal the case of Employers in relation to Punjab National Bank Vs. Ghulam Dastgir (1978) 1 LLJ 312 that a driver could be employed by the officers of Bank. It is true that in the case of Hussain Bhai Vs. Alth Factory (1978)

Lab IC 1264 the test of control was employed. In the opinion of the tribunal this demand of making all the drivers permanent cannot be granted unless the Federation comes with a specific case of employment by manager, officers etc. as camoflouge and for the relief that the company is the real employer. Unless these reliefs are claimed this tribunal cannot award fulfilling demand of Federation.

(c) Another demand is made in respect of mechanics of the company. It is alleged that the mechanics who are working for providing customer service to the consumers should be made permanent employees of the company. The company has made a sham and bogus arrangement to show them as the employees of the dealers with a view to avoid giving them benefits of permanent service. The company has opposed the demand stating that the mechanics are not employed by the company. The Federation has no business to espouse the cause of the workmen. It has been argued on behalf of the Federation that the arrangement made by the compnay is bogus and amounts to unfair labour practice as evinced by the documents Ex W-26, Ex W-27, Ex-W-28 and Ex- W29. This tribunal is of the view that the demand as raised by the Federation cannot be accepted. It is not disputed that the Bajaj spares and Service Dealers can employ mechanics for providing services to the customers. However, what is disputed that there is no real contract of employment. The existing one is sham and bogus. Such a question cannot be adjudicated generally without examining the real industrial dispute which is between the mechanics and the dealers and company. It would be proper for the Federation to raise a separate dispute focusing on the contract of employment of mechanics wherein the mechanics themselves come forward to raise their demand. In view of this position it is held that this demand cannot be adjudicated upon in this reference.

(d) The aforesaid reasoning shall also apply to case of security staff. It would be proper for the Federation to prove by leading cogent evidence that the security staff employed by the company are actually employed by the company before question of making them permanent arises. The company is not prohibited from employing contract labour. If they are really employed as contract labour or not will depend upon the nature of their employment. It is not possible to answer this question on the basis of demand made by the Federation.

(e) The demand of the Federation that sweepers employed on vouchers should be treated as the workmen of the company and should be made permanent. It has been stated in the written statement that the sweepers are not employed by the company. They are employed on the basis of work they perform. This is the system employed by the company. It has been argued on behalf of the Federation that the company has a statutory obligation to keep the office and the premises clean. The act of sweeping and cleaning of the office establishments have to done on the day to day basis. The requirement is perennial but the company does not show the sweepers as the workmen of the compnay this argument is countered by saying that the company does not need sweepers as the workmen. It engages them for a certain hours in day and pays them according to the work performed by them. Again, this demand on the part of the Federation has the same defect. It cannot be hold in this reference that sweepers are engaged by the company as a part of its establishments.

90. The Demand No. 22 relates to Carting and Forwarding Agents (C & F Agents for short). The Federation has stated in its statement of claim that the company is required to transact its business of storage and distribution for sale. For this purpose, its requires the movements of goods, which is an essential function of marketing of goods. The function of carting and Forwarding is allegedly done through the C&F Agents when the indents/orders are received by the company. It is alleged that the C & F agents are merely paper agents. Actually, these so called agents perform the functions of the company. The machinery of Carting and Forwarding is of dubious sham and bogus. No. function is performed by the middlemen. In reply it has been said that the practice of employing C & F Agents is standard practice followed by all the companies who are manufacturing selling or distributing goods. It is alleged that C & F Agents store and stock goods of the compnay before they are required to be deemed to the party demanding the goods. They are transported and delivered upon advice received from the company. The C & F agents are the agents of compnay under contract. The employees of C & F Agents are not the employees of the company They utilize their own labour for loading unloading and transporting. The C & F agents are paid for performing the unified function of storage and transport. The Federation may approach the authorities under Contract Labour (Regulation and Abolition Act) 1970. The question is not very different than the one we have dealt with earlier. The Federation has

relied upon the evidence of Trilok Kumar Vasudeva. It is stated by Trilok Kumar Vasudeva that company has appointed one classic Agent as a C & F agents at Chandigarh. He stated that following facts indicated that the appointment of C & F agents was shown arrangement at Chandigarh.—

(a) There were no separate office of the C&F Agents.

(b) The workers of C & F agents were operating from the premises belonging to the company.

(c) The furnishing was done by the company but it was shown as if it belongs to company.

(d) The facility of electricity, telephone were that of the compnay. However, the books of C&F agents showed others.

(e) Out of the Four employees shown in the books of C & F agents the three employees were doing clerical work and one was doing the job of packer.

(f) There were two more workers employed lately to help packer.

(g) The working hours of the workmen of the compnay and that C & F agents were the same. So were the holidays.

(h) However, the witness stated that the workmen of the company are paid directly whereas the workmen of C & F agents were not getting thier wages from the company.

91. The witness in cross examination denied the suggestion that there was no master and servant relationship between the so called workmen employed by C & F Agents and the company. The evidence of Yogersh Kudtarkar examined by the company is not at all satisfactory. He stated that the system of C & F Agents existed in the industry like other industrial organization. It was stated that the demand for abolition of C & F agents has been as per settlement dated 28-6-1992 Exhibit W 21. In cross examination this witness stated that company did not have any record of C & F workmen. He denied that at Calcutta branch all other workers except the driver and peon were working C & F agents. He denied that at Cochin no person is shown in roll of the compnay but admitted that at the time of filing there was no person shown to be in the roll of the compnay. It is surprising that witness did not know that there was record kept by branch officers regarding the arrival of goods. The witness was shown Ex. W 44 and Ex. W 45 (Store arrival reports) at matchwel electrical compound Vadgaon Shri Pune. He denied them because they were Xerox copies. Similarly, he did not comment on Ex. W 30, Ex W 31, Ex W 32, W 33, to W 39 Ex. W 41 because they were Xerox copies. However, he did not deny the names of V. U. Menon, M. C. Joshi, Elna Lata Godse and Sethe Govind. The order of the Provident Fund Commissioner shows that compnay had provided its own godown for use of C & F Agents. It was found that the workmen employed by the C & F agents were working exclusively for the company. The names given above were found to be the employees of Shri Agencies which claimed to be a C & F agents. The finding that workmen were working in connection with the work of the company utilizing the Stationery of Bajaj Electricals for (i) for calling the materials inward from the suppliers (ii) Forwarding the letter for supply of bill to the dealers (iii) for collection of payment of dealers through Bank (iv) the specimen of invoice raised by the Branch office on dealer/Consumer. It was found thus that in all forms of business the stationery of Bajaj Electrical was used. It was pointed out by Shri Chidambaram that there was a settlement dated 30-6-1986 Ex W 19 where by it was agreed by the company as per clause 3 (d) that no C & F agents shall be working at the various branches of the company except at Pune, Chandigarh and Delhi. The witness Kudtarkar admitted that there was such a settlement. The witness showed his ignorance about the fact if C & F agencies were brought in by the companies in the breach of 1986 settlement Ex. W 19. The witness admitted that the permanent staff of all the branches should have been 386 as per settlement and that of Bombay should have been 128. It was reduced to 11 at time of filing the written statement. The witness admitted that there are number of persons employed as C & F agents except at Delhi—I branch and Ahmedabad branch. Shri Kudtarkar denied any knowledge about the certificate obtained by the company under the Contract Labour (Abolition and Regulation) Act 1970 to engage contractors. He stated that he was not in position to produce the record of the company regarding service conditions of workmen employed with C & F agencies. It has been argued that the federation had produced by way of sample record of C & F agents of Chennai, Cochin Branch, Delhi Branch II Chandigarh branch, Indore branch, Lucknow branch, Pune branch and Raipur branch. These documentss show that some persons employed as clerks and larger number of persons as packers. It was argued that the system of C & F is nothing but a mere camouflage and a mask. Behind the mask the face of real employer was that of the company and therefore, this tribunal should direct that all the C & F employees should be treated as regular employees. It was argued there is no substance in the argument. On 28-6-1992 the demand for abolition of C & F was given up by multual consent. It was argued there was no merit in the contention of the company that as per minutes of Ex. M 26 dated 29-3-1990 the clause 3(a) and 3(b) of the settlement were deleted. It was argued that the documents Exhibit M 26 could not change the

settlement Exhibit W 19. It was further shown that document M 26 shows that all the persons alleged to be represent at the meeting had not signed the document. It was pointed out that the document bears signature of only four persons out of six persons on behalf of federation present at the meeting on 28-3-1990. The document M 26 does not bear signature of Shri Shekhar Bajaj, M.D. of the company and Shri H.N. Trivedi the Presdent of the Federation and Shri A. K. Muraleedharan. The argument on behalf of company is that as per agreement dated 26-3-1990 Exhibit M 26 there was consent given by the Federation that it shall not question the employment of C & F agents. Therefore, the principle of estoppel comes into play. It appears to this tribunal that the documents M 26 could not be pressed into service if all the persons allegedly present in the meeting have not signed the document. If the meeting was of the three representatives of the company then why Shri. Shekhar Bajaj did not sign it. Then it is apparent that 3(a) was initially typed. Then 3(b) was added by pen in document M 26. The compnay should have explained how this incomplete document can be relied upon. So far as law of meeting is concerned everybody who is required to be present should attend the meeting unless prevented by any other sufficient cause. The minutes of meetings are usually signed as token of assent to what has been recorded. The signatures confirm the presence of the persons. Since it is not possible to infer that all the persons were informed to be present in the meeting on 26-3-1990 it would be difficult to hold that all the persons had notice of the meetings. One of the persons Shri A. K. Murlidharan was examined by the Federation. If the company so chose it could ask the relevant questions about the minutes of meeting dated 26-3-1990. It could further prove the presence of all the participants by leading oral evidence. In absence of proof it is difficult for this tribunal to hold that the minutes of meting dated 26-3-1990 document exhibit M 26 is a true minute of a meeting showing all the participants made there points of view. Even if one person was not allowed to do so due to lack of notice then under the law meetings the resolution would be illegal because he alone could by means of force discussion could change the decision. Therefore, the question of estoppel does not arise. The federation has placed on record sufficient evidence before this tribunal that the company is indulging in the practice of employing workmen for its own purpose and is showing those workmen as the employees of a named C & F agents in various branches. The company could have produced the terms of the contract with various C & F agents so that they could be tested. The company could have examined the relevant witnesses showing how the contract was worked out in details for satisfying the tribunal that a genuine C & F contract existed. As already seen that the witness Kudtarkar has not given any saftisfactory evidence. There is no merit in the argument that this tribunal cannot grant relief to the federation in absence of C & F agents. It was for the company to have taken a plea that its contracts were genuine by idenifying the C & F agents. Then only this tribunal could have directed the addition of these agents. In the written statement no such plea was taken. The company was aware that the Federation had stated that the arrangements of the company were false. The result of the aforesaid discussion is that this tribunal directs that the so called workmen employed by the company in its establishment through out the country shall be treated as the employees of the company from the date of the publication of this award. They shall be given the same rank in which they were working and absorbed in the category. For example, a clerk shalll be given the post of clerk and the packer shall be given the post of packer. The workmen shall be entitled to all the emoluments which a regular workmen is entitled. The company shall given them the rank and pay scale as if they have been recruited by it on the day of the publication of award.

92. The next demand is for regulation of transfer of members of the Union. It is demanded that there should be discussion with the representatives of the company prior to transfer in order to avoid victimization. This tribunal is unable to accept that the representatives of the Union should be involved in any discussion prior to transfer. This shall negate the right of the company to transfer. It would be difficult to hold that every transfer is done with malafide intention.

93. The next demand is regarding the facilities to the Union. This demand has raised allegations and counter allegations and a lengthy cross examination of Kudtarkar who made allegations against Shri. Chidambaram but was unable to sustain them. Instead of opposing demand it would have been proper for the company with counter suggestions. This tribunal holds that it would be proper to give the facility of travel allowance for visiting the different branches once in a year on the part of the office bearer on the same terms as is given to the office bearer for attending the meeting of the executive committee. They shall not be given any daily allowance. It would be proper to give benefit of telephones expenses and stationery expenses. The Company shall reimburse the union telephone expenses to the extent of Rs. 2000/- per month. This ceiling is being imposed to avoid misuse of the facility. Similarly, the company shall reimburse the union to extent of Rs. 20,000/- per year toward stationery. This direction shall be operative from the date of the publication of the award. The facility already enjoyed by the federation shall contiune. These are additional facilities.

94. The next demand is that condition that three employees of the Federation should be elected as the memebers of the Board of trustees of the Provident Fund. Bajaj Electrical Employees Provident Fund Trust is provided in the settlement dated 10-5-79 Ex W 15. It is claimed that it should not be compulsory that the trustee should be based at Mumbai. This demand was conceded to by Shri C.K. Pawaskar during the arguments. In the written arguments no objection is taken. Therefore, it is held that aforesaid board shall consists of three Trustees representing the employees and the federation shall be any three who may be necessarily from Mumabi.

95. The further No. 26 of the Federation that the company should not be permitted to appoint officers by upgrading the workmen cannot be accepted. If a workman is made an officer and his higher wages, then there should be no objection in the change of name of his office. He get better facilities. The demand is rejected.

96. The demand for personal pay cannot be accepted. The case of Mumbai, Delhi and Calcutta cannot be accepted for all over country. The other cities are equally costly. The learned counsel for the company in his oral arguments as well as in the written arguments has not disputed that the workmen of other cities are not getting personal pay. However, there are certain computer generated documents on record showing personal pay being paid to all the workmen. It is difficult to accept that these documents escaped the attention of the counsel for the company who had filed them, In any case this tribunal does not find any justification for grant of personal pay as claimed by the federation.

97. The demand No. 28 regarding the reimbursement of petrol expenses and vehicle maintenance charges is not acceptable to this tribunal. The only reason for demand is that the Officers, managers, etc. are getting that benefit. This tribunal does not think it would be proper to grant reimbursement of petrol and maintenance of private vehicles of workmen.

98. There is demand for interest free loan to the extent of Rs. 25,000/- per employee by way of personal loan to the extent of 80% of the cost of vehicle and Rs. 2 lakhs for construction of new house and Rs. 50,000/- for repairs. Under the existing system the workmen are granted personal loan to the extent of Rs. 10,000/- at rate of interest of 8% per annum. There is no good reason to increase the loan amount to Rs. 25,000/- that too interest free. There are banking and other financial institutions which give loan to people. It is not proper to encourage borrowing habit by granting interest free loans to the workmen. There is reason for putting extraordinary burden on the company's finances by increasing the amount. The company gives entire vehicle loans at 17.5% interest. It would not be proper to change the system by granting 80% of interest free loans. Similarly the company gives loan of Rs.40,000/- for housing to an employee at rate of 8% per annum subject to the condition that the workman should have put in 15 years of service. It is argued that the company can easily recover loans from the workmen and the risk factor involved is next to nothing. It is also argued that company grants loan to officers and some times to an exhorbitant extent. It was argued that it is the policy of the company to give to its officer then own houses. The same policy is not followed by the company. This tribunal does not think it would be proper to grant interest free loan for the items demanded by the worker and burden the company financially at this juncture. It may be that the company may have acted irregularly in granting loan to the wife of the C.M.D. or to the relative of the President of the company. The adjudicator cannot take of wrong done by the management of the company into account for giving an award on demand of the Federation of workmen.

99. There is demand for increase of the allowance to the driver. The drivers of the company have to perform duties at odd hours. They are paid extra rupees of 50/- Per month. It would be proper that this amount is increased to Rs. 250/- per month. Accordingly, all drivers of the company shall be given Rs. 250/- per month extra allowances for doing duty on odd hours.

100. The demand for outfit allowance cannot be accepted for all the workers. There is difference between persons who are doing job of clerical nature and the persons who are working in the field. The persons working in the field like drivers, mechanics and the peons may be given uniform. It is stated on behalf of the company that such a practice of giving uniforms to mechanics, drivers and peons exists. They are given three sets of uniforms. There appears to be no case for giving uniforms to other personnel. They may even resent. Thus, the demand for outfit allowance is rejected.

101. This tribunal is of the view that the 16 paid holidays granted by the company are adequate. There appears to be no good reason for increasing the number of paid holidays. The demand is not accepted.

102. The last demand is that accompany should be directed not to fill the 7 category of posts by appointing an Officer and ask him to do job of 7 categories. It is also prayed that those officers who have been appointed in 7 categories of workmen should be ordered to be withdrawn. It has been argued on behalf of the Federation that by appointing Officers to the post of workmen the company is following the policy of dividing the workmen by employing officers who are paid to be the stooges of the management in the establishment. Though they are ranked as Officers they do the job of lesser category which is evolved by various settlements. In effect these officers are bribed by the management by paying higher pay with a view to destroy the unity of trade union movement. This tribunal is of the view that no such relief as claimed can be

granted. The employer can ask the higher ranked official to do a lower job. If the concerned officer is willing to do this tribunal cannot prevent him for doing that. It would be proper if unfair practice on the part of the employer may be subject matter of dispute. The Federation is free to raise such a dispute and establish it in accordance with. The demand No. 33 as made by the Federation cannot be accepted as such.

103. Now that this tribunal has dealt with all the demands and has given its adjudication on all the points. This tribunal has granted new pay scales while answering the demand of Federation. The pay scales shall come into effect from 1-1-1996. Similarly, the demand of the Federation regarding increase in DCA has been granted from 1-1-1996. The House rent Allowance is granted from 1-1-1996. The relief regarding Carting and Forwarding Agents shall have an impact in future. However, this tribunal has found that these are in reality the employees of the company. The difference of payment by their absorption shall not make any real dent into the finances of the company. The rate of the Leave Travel Allowance has been increased to 8.33% instead of 6% with the date of publication of the award. The demand for Medical reimbursement has been increased to rate of 8.33% from date of coming into force of award. The company has been directed to include the children of workmen in the Mediclaim policy. The sick leave has been increased to 15 days in a year and total accumulation of earned leave is increased 250 days instead of 150 days. The claim in respect of gratuity has been granted partially to the effect that pay of last 30 days shall be taken as a basis of calculation for calculating gratuity.

104. It would be apparent that the major demands of the Federation regarding pay scales, DCA and HRA have financial implications. The company is required to pay arrears. It is undisputed that the consent order passed by the Bombay High Court in Writ petition No. 959 of 1999 had set aside the interim reward dated 13th January, 1999 passed by this tribunal and directed that each of workman shall get adhoc interim relief of 500/- per month payable from 1-2-1999 except workman working at Mumbai and Wardha. The High Court had further directed that the amount of Rs.500/- per month received by each workmen shall be adjusted in the final award. Therefore it is made clear that the company shall be entitled to deduct the total amount already received by each workmen while he had received by way of adhoc relief granted by the High Court by mutual consent.

105. This tribunal had considered the financial burden on the company while considering the increased pay scale and Dearness allowance. This tribunal had also stated that the company shall be able to bear the burden of H.R.A. These demands as accepted by the tribunal involve arrears. This tribunal had already indicated that company shall be able to bear the financial burden of pay scales and DCA. It is not necessary to repeat the same reasons once more. It may be noted that the arrears of HRA shall be much less than what was estimated by the company on the assumption that the entire demand for increase in HRA shall be accepted. The immediate impact of payment of arrears shall be softened by the fact that the company shall not be liable to pay the arrears in toto but only the difference after deducting the amount already paid. This tribunal is of the view that the company had given exaggerated burden of the impact of demand No.6. Both the witnesses of the company did not give satisfactory answers except saying that heavy burden as given in written statement shall be put upon the company. This aspect of the matter shall be commented on further in the sequel it appeared to this tribunal the figure of Rs. 12.58 lacs was exaggerated in the estimate exhibit M32 (5) in order to inflate the impact. The effect of this award would be much less than 3 lacs annually after deducting the HRA already paid by the company.

106. It is hereby made clear that there are no or very little Financial implications in this award in respect of the following demands for the reason they are rejected or have been accepted as such without any change in case.

Demand No.3	: Stagnation Increment Accepted as such.
Demand No.4	: Upgradation (Rejected).
Demand No.9	: Education allowance (Rejected)
Demand No. 10	: Reimbursement of books and Periodicals (Rejected)
Demand No. 17	: Pension scheme (Rejected)
Demand No. 18	: Death-cum-Retirement benefits (Rejected)
Demand No. 19	: Retirement Age (Rejected)
Demand No. 20	: Recruitment of one dependant (Rejected)
Demand No. 21	: Making Temporary employees Permanent (Rejected)
Demand No.23	: Transfer of Union members (Rejected)
Demand No.25	: Election of trustees to Bajaj Employees PF trust (No financial Implication)
Demand No.26	Regarding stoppage of granting Officers grade (Rejected)
Demand No.27	Personal Pay (Rejected)

Demand No.28	Reimbursement of petrol expenses And reimbursement of maintenance of the vehicle of the Workman. (Rejected)
Demand No. 29	: Loan benefits (Not accepted)
Demand No. 31	: Outfit Allowance (Rejected)
Demand No. 32	: Paid holidays (Rejected)
Demand No. 33	: Change of designation (Rejected)

The following demand have some what marginal financial impact on account of these award:

Demand No. 2	: Fitment.
Demand No. 7	: Leave Travel Concession.
Demand No. 8	: Reimbursement of Medical Expenses.
Demand No. 11	: Reimbursement of Medical Check up.
Demand No. 12	: Health Insurance Scheme
Demand No. 13	: Leave Benefits.
Demand No. 14	: Accumulation of Leave.
Demand No. 15	: Encashment of Leave.
Demand No. 16	: Gratuity.
Demand No.22	: Carting and Forwarding Agents.
Demand No. 24	: Trade Union Facilities
Demand No.30	: Drivers Allowance.

The impact of this award is much below the estimated made by the company. The exhibit M 32 (5) had stated the expenditure of company to be about 1031.71 lacs annually. It is an astonishing figure. None of the two witnesses had furnished any proper explanation for the estimate. In this connection, it would be proper to point out that Shri. V.V. Shahane stated in his cross examination as follows:

"It is correct to say that the expenditure on the salary of the workman has not been produced by the company by filing any document. We can give the break up. It is correct to say that number of workmen concerned in this reference have reduced, during the pendency of this reference. I shall not be able to say that the expenditure on the concerned employee has been reduced owing to the fact that their number has been reduced. I shall be able to produce the information after some time. I have not personally worked out the cost of the 33 demands made by the workmen through the Federation. However, I verified the statement made by the Finance Deptt. It is correct to say that the calculation made by the Finance Deptt. have not been mentioned in my affidavit. In my affidavit I have not shown what would be the cost to the company if all the 33 demands are considered by it. I do not know how the Federation had calculated the burden passed on to the company for its 33 demands. I am not able to say whether the company demanded any explanation from the Federation regarding the burden of cost to be borne by the company. I am unable to say whether there was any negotiation with the Federation regarding the burden of the cost. The averments made in para 6 of my affidavit is not my personal opinion I have dealt with the Financial aspect of the company and the opinion is based on the document which I come across and also on the discussion with the officials of the company. Mr. Shahane was the last witness examined by the company. The company did not file Exhibit M 32(5) when the witness was in the witness box initially. The witness was discharge on18-7-2003. The document Exhibit M 32(5) was filed on 17-7-2003. In cross examination of 18-7-2003 the witness answered regarding item No. 18 that the calculation has been made on the basis that if all the demands their arrears of gratuity shall be increased to 770 lakhs. It may be readily seen that this impact in item No. 18 relates to payment of gratuity to the workmen in future. It is based on the assumption that the company may have to invest that amount. The immediate impact of the payment of gratuity was Rs.28.27 lakhs. Thus by adding Rs.770 lakhs to the total the company had exaggerated time, amount. If we reduce 770 lakhs from the aforesaid estimate of 1031 lakhs then the company would have to pay Rs.261.42 lacs annually even according to its own estimate. This tribunal is not satisfied by the conduct of the company because it did not produce its estimate at the earliest. Nevertheless it has considered the case of the company on the basis of document supplied by it without drawing any adverse inference. The company should have given some clue to the figures by examining the person who was in know of the entire matter.

107. In this connection, this tribunal has to notice the argument of Shri Chidambaram who assailed the way authenticity of the figures of the company by stating there is evidence on record that the management of the company was playing with the profits of the company. Shri. Chidambaram referred to the cross examination of Shri. V.V. Shahane and showed that the company had advanced loan with 1471.14 lacs to Bajaj Ventures. It was argued that Bajaj Ventures ceased to be subsidiary and the company still advanced loan worth Rs. 1 crore 25 lacs. Only interest amounting to Rs.3,04,14,000 was received. It was sought to be shown that there was fudging because the total shares of Bajaj Ventures amounting to Rs. 7 crores 50 lakhs were brought for Rs.50 from Black and Decker and were sold to joint holding company for

26.55 lacs. It was pointed out that company indulged in shady transactions. The company itself was paying 18 crores of interest and it advanced the interest free loan to Bajaj Ventures of which Shri. Pradeep Kumar Bajaj was a partner. It was further pointed out that it was also from the balance sheets filed by the company loan of Rs. 70 lacs were given to the wife of Shri.R.Ramkrishnan without any interest. It was argued that loan of 3 crores without interest was issued to wife of Managing Director. There were other transactions which according to Shri.Chidambaram were unsavory like the one that company sold its building to the wife of Managing Director and the company then took it on rent from the wife of Managing Director. These transactions were shown from the balance sheet and were not controverted by the counsel for the company. This tribunal has not allowed itself to be prejudiced by these paper transactions. In the complex structure of taxations a number of tricks are adopted. However, that takes a lot way from the general presumption that could be given to a balance sheet. After going through the balance sheet of the company this tribunal is of the opinion that company shall be able to bear the financial burden placed upon the company. This tribunal does not want to comment on the transactions mentioned in the balance sheet because some times paper transactions are treated for altogether different purposes. The latest balance sheets have indicated that the company have sufficient reserve. The market economy is growing in the country. At time of delivery of this award, the national Govt. is claiming growth at the rate of 8%. The share market also reflect this growth. There is no reason the company shall not increase in its profits.

108. Thus the reference made to this tribunal by the Central Govt. is answered as already indicated. The company shall pay to each workmen serving with the company all the monetary arrears within a period of 90 days from date of receipt of copy of this award failing which it will have to pay interest @ 8% per annum. There shall be no order as to costs.

It would not be out of place to record my thanks to Mr.Nadar Jebaselvan Asir, my Personal Assistant who has taken great pains to type again and again the portions of the award which did not appear to be satisfactory. Mrs.S.S.Avsare, my Secretary has given me unstinted support in this matter. Needless to state that the mistakes, if any, are mine.

S.C. PANDEY, Presiding Officer

नई दिल्ली, 19 मार्च, 2004

का. आ. 929.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, बी०बी०एम०बी० प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चण्डीगढ़ (संदर्भ संख्या 145/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-02-2004 को प्राप्त हुआ था।

[सं० एल-23012/18/2000-आई आर (सी. एम-II)]

एन०पी० केशवन, डेस्क अधिकारी

New Delhi, the 19th March, 2004

S.O. 929.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 145/2002 of the Central Government Industrial Tribunal-cum-Labour Court, Chandigarh as shown in the Annexure, in the industrial dispute between the management of BBMB and their workmen, received by the Central Government on 18-03-2004.

[No. L-23012/18/2000-IR(CM-II)]

N.P. KESAVAN, Desk Officer

ANNEXURE

CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT CHANDIGARH

Presiding Officer : Shri S.M. Goel

Case No. ID 145 of 2002

Sh. Sohan Singh S/o Sh. Sant Ram,
Village Kiargi, Post Office-Jaldevi,
Tehsil-Sunder Nagar,
Distt. Mandi (HP) ... Applicant.

Versus

1. The Chief Engineer,
BSL Project, BBMB, Sunder Nagar,
Distt. Mandi, H.P.

2. The Executive Engg. Township Division,
BBMB, Sunder Nagar, Distt. Mandi ... Respondents

APPEARANCES :

For the Workman : Shri Dhani Ram

For the Management : None

Award Passed on 20-2-2004

Central Govt. vide notification No. L-23012/18/2000/IR (CM-II) dated 17-7-2002 has referred the following dispute to this Tribunal for adjudication :

> "Whether the action of the Chief Engineer, Beas Sutlej Link Project, BBMB Sunder Nagar (HP) and Executive Engg., BBMB, Township, Division, Sunder Nagar, Distt. Mandi (H.P.) in disengaging Sh. Sohan Singh S/o Sh. Sant Ram from the services on 19-10-96 (FN) without notice is legal and justified? If not, to what relief he is entitled to?"

2. The authorised representative of the workman made the statement that the workman does not want to pursue with the present reference. In view of the same the present reference is returned to the Ministry as withdrawn. Central Govt. be informed.

Chandigarh S.M. GOEL, Presiding Officer

20-2-2004

नई दिल्ली, 19 मार्च, 2004

का.आ. 930.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, रिजनल मैनेजर एण्ड डिसीपीलीनरी एथोरटी प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण हैदराबाद (संदर्भ संख्या एल.सी.आई.डी. नम्बर 67/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-03-2004 को प्राप्त हुआ था।

[सं. एल-22013/1/2004-आई आर(सी.-II)]

एन.पी. केशवन, डैस्क अधिकारी

New Delhi, the 19th March, 2004

S.O. 930.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. L.C.I.D. No. 67/2003) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of the Regional Manager & Disciplinary Authority and their workman, which was received by the Central Government on 18-03-2004.

[No. L-22013/1/2004-IR(C-II)]

N.P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

PRESENT:

Shri E. ISMAIL, Presiding Officer

Dated the 17th day of November, 2003

Industrial Dispute L.C.I.D. No. 67/2003

BETWEEN:

Sri B. Rattaiah,
D. No. 02-09-02, New Kaviraja Park,
Gandhinagar, Tenali-522201.
Guntur District ... Petitioner

AND

The Regional Manager & Disciplinary Authority,
Regional Office: 6-3-871, "Snehalatha"
P.B. No. 45, Greenland's Road, Begumpet,
Hyderabad-500016

And 3 others ... Respondents

APPEARANCES

For the Petitioner : M/s. C. Vijaya Shekar Reddy, N. Krupanand Reddy, T. Raghuveer Reddy, Ghanshyam, Jagadishwar Reddy, D. S. V. G. Nagaraju & P. V. Amarendra Reddy, Advocates

For the Respondent : Sri V. Srinivas, Advocate

ORDER

This is a case taken under Sec. 2A(2) of the I.D. Act, 1947 in view of the judgment of the Hon'ble High Court of Andhra Pradesh reported in W.P. No. 8395 of 1989 dated 3-8-1995 between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others.

2. A memo is filed by the Counsel for the Petitioner, counter affidavit filed by the Counsel for the Respondent, today i.e., the 17th day of November, 2003 that he is withdrawing his case. Hence, the case is dismissed as withdrawn reserving his right to file before the appropriate forum.

Dictated to Kum. K. Phani Gowri, Personal Assistant transcribed by her corrected and pronounced by me in the Open Court on this the 17th day of November, 2003.

E. ISMAIL, Presiding Officer

Appendix of Evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 19 मार्च, 2004

का.आ. 931.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, बी.बी.एम.बी. प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चण्डीगढ़

(संदर्भ संख्या 88/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-02-2004 को प्राप्त हुआ था।

[सं. एल-23012/21/2001-आई आर(सी.एम.-II)]

एन.पी. केशवन, डैस्क अधिकारी

New Delhi, the 19th March, 2004.

S.O.931.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government here by publishes the Award (Ref. 88/2002) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Chandigarh as shown inthe Annexure, in the industrial dispute between the management of the BBMB, and their workmen, received by the Central Government on 18-03-2004.

[No. L-23012/21/2001-IR(CM-II)]

N.P. KESAVAN, Desk Officer

ANNEXURE

CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT CHANDIGARH

Presiding Officer : SHRI S.M. GOEL

Case No. ID 88 of 2002

Sh. Rulia Ram S/o Sh. Bhanku Ram
C/o Sh. Dhani Ram, General Secretary
BSL Project Mazdoor Ekta Union,
S-2/773, Sunder Nagar, Mandi (H.P.) ... Applicant.

Versus

1. The Chief Engineer,
BSL Project, BBMB, Sunder Nagar,
Mandi (H.P.)

2. The Executive Engg, BBMB,
Township Division,
Sunder Nagar, Mandi (HP) ... Respondents.

APPEARANCES

For the Workman : Shri Dhani Ram

For the Management : None

Award

Passed on 20-2-2004

Central Govt. vide notification No. L-23012/21/2001/IR (CM-II) dated 7-5-2002 has referred the following dispute to this Tribunal for adjudication :

"Whether the action of the Chief Engineer, Beas Sutlej Link Project, BBMB Sunder Nagar (H) and Executive Engineer, BBMB, HC & BG Division, BBMB, Sunder Nagar, Distt. Mandi (HP) in disengaging Sh. Rulia Ram S/o Sh. Bhanku Ram Ex-Beldar from the services on 18-10-96 (F.N.) without notice is legal and justified? If not; to what relief the workman is entitled to?"

2. The authorised representative of the workman made the statement that the workman does not want to pursue with the present reference. In view of the same the present reference is returned to the Ministry as withdrawn. Central Govt. be informed.

Chandigarh S. M. GOEL, Presiding Officer
20-2-2004

नई दिल्ली, 19 मार्च, 2004

का.आ. 932.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, बी.बी.एम.बी. प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चण्डीगढ़ (संदर्भ संख्या 63/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-02-2004 को प्राप्त हुआ था।

[सं. एल-23012/22/2000-आई आर(सी.-II)]

एन.पी. केशवन, डैस्क अधिकारी

New Delhi, the 19th March, 2004.

S.O.932.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 63/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Chandigarh as shown in the Annexure, in the industrial dispute between the employers in relation to the management of BBMB and their workmen, which was received by the Central Government on 18-03-2004.

[No. L-23012/22/2000-IR(C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT CHANDIGARH

Presiding Officer : Shri S.M. Goel

Case No. ID 63 of 2001

The Secretary Legal,
Nangal Bhakra Mazdoor Sangh,
Qtr. No. 35-G, Nangal Township,
Distt. Ropar. ... Applicant.

Versus

1. The Chief Engineer (Generation),
B.B.M.B., Nangal Township,
Distt. Ropar ... Respondent.

APPEARANCES

For the Workman : Sh. R. K. Singh

For the Management : Sh. R. C. Atri

AWARD
Passed on 20-2-2004

Central Govt. vide notification No. L-23012/22/2000-IR (C-II) dated 5-2-2001 has referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of BBMB in not considering the case of Shri Pawan Kumar S/o Shri Chint Ram for re-designating as Forman and place him in the pay scale of Rs. 1800—3200 is legal and justified? If not, to what relief the workman is entitled to and from which date?"

2. The authorised representative of the workman made the statement that the workman does not want to pursue with the present reference. In view of the same the present reference is returned to the Ministry as withdrawn. Central Govt. be informed.

Chandigarh S. M. GOEL, Presiding Officer
20-2-2004

नई दिल्ली, 19 मार्च, 2004

का.आ. 933.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, बी.बी.एम.बी. प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चण्डीगढ़ (संदर्भ संख्या 91/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-03-2004 को प्राप्त हुआ था।

[सं. एल-23012/20/2001-आई आर(सी. एम.-II)]

एन.पी. केशवन, डैस्क अधिकारी

New Delhi, the 19th March, 2004

S.O. 933.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 91/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Chandigarh as shown in the Annexure, in the industrial dispute between management of BBMB, and their workmen, received by the Central Government on 18-03-2004.

[No. L-23012/20/2001-IR(CM-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT CHANDIGARH

Presiding Officer : SHRI S.M. GOEL

Case No. ID 91 of 2002

Sh. Ganga Ram S/o Sh. Birstu Ram,
Vill. Dodwan, PO. Bhojpur,
Teh. Sunder Nagar, Mandi (HP) ... Applicant.

Versus

1. The Chief Engineer,
BSL Project, BBMB, Sunder Nagar,
Mandi (HP)

2. The Executive Engineer, BBMB,
Township Division,
Sunder Nagar, Mandi (HP) ... Respondents.

APPEARANCES

For the Workman : Shri Dhani Ram

For the Management : None

AWARD
Passed on 20-2-2004

Central Govt. vide notification No. L-23012/20/2001/IR (CM-II) dated 7-5-2002 has referred the following dispute to this Tribunal for adjudication :

"Whether the action of the Chief Engineer, Beas Sutlej Link Project, BBMB Sunder Nagar (HP) and Executive Engineer, BBMB, B.R.S.C. Division and Plant Design Division BBMB, Sunder Nagar, Distt. Mandi (HP) in disengaging Sh. Ganga Ram S/o Sh. Birstu Ram Ex-Beldar from the services on 18-10-96 (FN) without notice is legal and justified? If not, to what relief the workman is entitled to?"

2. The authorised representative of the workman made the statement that the workman does not want to pursue with the present reference. In view of the same the present reference is returned to the Ministry as withdrawn. Central Govt. be informed.

Chandigarh S. M. GOEL, Presiding Officer
20-2-2004

नई दिल्ली, 19 मार्च, 2004

का.आ. 934.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, बी.बी.एम.बी. प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चण्डीगढ़

(संदर्भ संख्या 42/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-03-2004 को प्राप्त हुआ था।

[सं. एल-23012/8/2002-आई आर (सी. एम.-II)]

एन.पी. केशवन, डैस्क अधिकारी

New Delhi, the 19th March

S.O. 934.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 42/2003) of the Central Government Industrial Tribunal cum Labour Court, Chandigarh as shown in the Annexure, in the industrial dispute between management of BBMB, and their workmen, received by the Central Government on 18-03-2004.

[No. L-23012/8/2002-IR(CM-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT CHANDIGARH

Presiding Officer : SHRI S. M. GOEL

Case No. ID 42 of 2003

Sh. Balak Ram S/o Sh. Faquiria,
C/o Sh. R. K. Singh, Secretary (INTUC)
H. No. 35-G, Nangal Township,
Teh. Anandpur Sahib (Ropar) ... Applicant.

Versus

1. The Chief Engineer, (Operation System, B.B.M.B., Sector 19-B, Chandigarh ... Respondent.

APPEARANCES

For the Workman : Sh. R. K. Singh

For the Management : Sh. R. C. Atri

AWARD

Passed on 20-2-2004

Central Govt. vide notification No. L-23012/8/2002-IR (CM-II) dated 17-2-2003 has referred the following dispute to this Tribunal for adjudication :

> "Whether the action of the management of BBMB Slapper in terminating the services of Sh. Balak Ram S/o Sh. Faquiria is legal and justified? If not, to what relief he is entitled to?"

2. The authorised representative of the workman made the statement that the workman does not want to pursue with the present reference. In view of the same the present reference is returned to the Ministry as withdrawn. Central Govt. be informed.

Chandigarh S. M. GOEL, Presiding Officer
20-2-2004

नई दिल्ली, 19 मार्च, 2004

का.आ. 935.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, बी.बी.एम.बी. प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चण्डीगढ़ (संदर्भ संख्या 90/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-03-2004 को प्राप्त हुआ था।

[सं. एल-23012/23/2001-आई आर(सी. एम.-II)]

एन.पी. केशवन, डैस्क अधिकारी

New Delhi, the 19th March, 2004

S.O. 935.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 90/2002) of the Central Government Industrial Tribunal cum Labour Court, Chandigarh as shown in the Annexure, in the industrial dispute between the management of BBMB, and their workmen, received by the Central Government on 18-03-2004.

[No. L-23012/23/2001-IR(CM-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT CHANDIGARH

Presiding Officer : SHRI S.M. GOEL

Case No. ID 90 of 2003

Sh. Shyam Singh S/o Sh. Birstu Ram,
Village Dodwan, PO Bhoujpur,
Tehsil Sunder Nagar,
Mandi (HP) ... Applicant.

Versus

1. The Chief Engineer
BSL, Project, BBMB, Sundernagar,
Mandi (HP)

2. The Executive Engineer,
BBMB. B.R.S.C. Division,
Plant Design Division
Sundernagar, Mandi (HP) ... Respondents.

APPEARANCES:

For the Workman : Sh. Dhani Ram

For the Management : None

AWARD
Passed on 20-2-2004

Central Govt. vide notification No. L-23012/23/2001/IR (CM-II) dated 6-5-2002 has referred the following dispute to this Tribunal for adjudication :

"Whether the action of the Chief Engineer, Beas Sutlej Link Project, BBMB Sundernagar (HP) and Executive Engineer BBMB, B.R.S.C. Division and Plant Design Division BBMB, Sundernagar, Distt. Mandi (HP) in disengaging Sh. Shyam Singh S/o Sh. Birstu Ram Ex-Beldar from the services on 18-10-96 (FN) without notice is legal and justified? If not, to what relief the workman is entitled to?"

2. The authorised representative of the workman made the statement that the workman does not want to pursue with the present reference. In view of the same the present reference is returned to the Ministry as withdrawn Central Govt. be informed.

Chandigarh S. M. GOEL, Presiding Officer
20-2-2004

नई दिल्ली, 19 मार्च, 2004

का.आ. 936.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, बी.बी.एम.बी. प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चण्डीगढ़ (संदर्भ संख्या 89/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-03-2004 को प्राप्त हुआ था।

[सं. एल-23012/18/2001-आई आर (सी.एम-II)]

एन.पी. केशवन, डैस्क अधिकारी

New Delhi, the 19th March, 2004

S.O. 936.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 89/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Chandigarh as shown in the Annexure, in the industrial dispute between the management of BBMB, and their workmen, received by the Central Government on 18-03-2004.

[No. L-23012/18/2001-IR (CM-II)]
N. P. KESAVAN, Desk Officer

ANNEXURE

CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT CHANDIGARH

Presiding Officer : Shri S.M. Goel

Case No. I.D. 89 of 2002

Sh. Lekh Raj, S/o Sh. Gurbux Ram,
Village Dodwan, P.O. Bhoujpur,
Tehsil Sundernagar,
Mandi (HP) ... Applicant.

Versus

1. The Chief Engineer
BSL, Project, BBMB, Sundernagar,
Mandi (HP)

2. The Executive Engineer,
BBMB Township Division,
Sundernagar, Mandi (HP) ... Respondents.

APPEARANCES:

For the Workman : Sh. Dhani Ram

For the Management : None

AWARD
Passed on 20-2-2004

Central Govt. vide notification No. L-23012/18/2001/IR(CM-II) dated 7-5-2002 has referred the following dispute to this Tribunal for adjudication :

"Whether the action of the Chief Engineer, Beas Sutlej Link Project, BBMB Sundernagar (HP) and Executive Engineer BBMB, B.R.S.C. Division and Plant Design Division BBMB, Sundernagar, Distt. Mandi (HP) in disengaging Sh. Lekh Ram S/o Sh. Gurbux Ram Ex-Beldar from the services on 18-10-96 (FN) without notice is legal and justified? If not, to what relief the workman is entitled to?"

2. The authorised representative of the workman made the statement that the workman does not want to pursue with the present reference. In view of the same the present reference is returned to the Ministry as withdrawn Central Govt. be informed.

Chandigarh S.M. GOEL, Presiding Officer
20-2-2004

नई दिल्ली, 19 मार्च, 2004

का.आ. 937.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, बी.बी.एम.बी. प्रबंधतंत्र

के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चण्डीगढ़ (संदर्भ संख्या 86/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-03-2004 को प्राप्त हुआ था।

[सं. एल-23012/19/2001-आई आर (सी. एम-II)]

एन.पी. केशवन, डैस्क अधिकारी

New Delhi, the 19th March, 2004

S.O. 937.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 86/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Chandigarh as shown in the Annexure, in the industrial dispute between management of BBMB, and their workmen, received by the Central Government on 18-03-2004.

[No. L-23012/19/2001-IR (CM-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT CHANDIGARH

Presiding Officer : Shri S.M. Goel

Case No. I.D. 86 of 2004

Sh. Nathu Ram S/o Sh. Paras Ram,
Village Nahera, P.O. Pandoh,
Tehsil Sunder Nagar,
Mandi (HP) ... Applicant.

Versus

1. The Chief Engineer
BSL, Project, BBMB, Sundernagar,
Mandi (HP)

2. The Executive Engineer,
B.B.M.B. Township Division,
Sundernagar, Mandi (HP) ... Respondents.

APPEARANCES :

For the Workman : Sh. Dhani Ram

For the Management : None

AWARD

Passed on 20-2-2004

Central Govt. vide notification No. L-23012/19/2001/IR(CM-II) dated 7-5-2002 has referred the following dispute to this Tribunal for adjudication :

"Whether the action of the Chief Engineer, Beas Sutlej Link Project, BBMB Sundernagar (HP) and Executive Engineer BBMB, Pandoh Dam Division, BBMB, Sundernagar, Distt. Mandi (HP) in disengaging Sh. Nathu Ram S/o Sh. Paras Ram Ex-Beldar from the services on 18-10-96 (FN) without notice is legal and justified? If not, to what relief the workman is entitled to?"

2. The authorised representative of the workman made the statement that the workman does not want to pursue with the present reference. In view of the same the present reference is returned to the Ministry as withdrawn Central Govt. be informed.

Chandigarh S. M. GOEL, Presiding Officer
20-2-2004

नई दिल्ली, 19 मार्च, 2004

का.आ. 938.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, बी.बी.एम.बी. प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चण्डीगढ़ (संदर्भ संख्या 87/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-03-2004 को प्राप्त हुआ था।

[सं. एल-23012/22/2001-आई आर(सी. एम-II)]

एन.पी. केशवन, डैस्क अधिकारी

New Delhi, the 19th March, 2004

S.O. 938.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 87/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Chandigarh as shown in the Annexure, in the industrial dispute between the management of BBMB, and their workmen, received by the Central Government on 18-03-2004.

[No. L-23012/22/2001-IR(CM-II)]
N. P. KESAVAN, Desk Officer

ANNEXURE

CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT CHANDIGARH

Presiding Officer : Shri S.M. Goel

Case No. I.D. 87 of 2002

Sh. Parshotam Ram S/o Sh. Paras Ram,
Vill. and Post Office Sainji.
Tehsil Sunder Nagar,
Distt. Mandi (HP) ... Applicant.

Versus

1. The Chief Engineer
BSL, Project, BBMB, Sundernagar,
Mandi (HP)

2. The Executive Engineer,
BBMB.Township Division,
Sundernagar, Mandi (HP) ... Respondents.

APPEARANCES

For the Workman : Sh. Dhani Ram

For the Management : None

AWARD
Passed on 20-2-2004

Central Govt. vide notification No. L-23012/22/2001/IR(CM-II) dated 7-5-2002 has referred the following dispute to this Tribunal for adjudication :

"Whether the action of the Chief Engineer, Beas Sutlej Link Project, BBMB Sundernagar (HP) and Executive Engineer H.C. & B.G. Division, BBMB, Sundernagar, Distt. Mandi (HP) in disengaging Sh. Parshotam Ram S/o Sh. Paras Ram Ex-Beldar from the services on 18-10-96 (FN) without notice is legal and justified? If not, to what relief the workman is entitled to?"

2. The authorised representative of the workman made the statement that the workman does not want to pursue with the present reference. In view of the same the present reference is returned to the Minstry as withdrawn Central Govt. be informed.

Chandigarh S.M. GOEL, Presiding Officer

20-2-2004

नई दिल्ली, 19 मार्च, 2004

का.आ. 939.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, बी.बी.एम.बी. प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चण्डीगढ़ (संदर्भ संख्या 45/95) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-03-2004 को प्राप्त हुआ था।

[सं. एल-23012/9/94-आई आर (सी.-II)]

एन.पी. केशवन, डैस्क अधिकारी

New Delhi, the 19th March, 2004

S.O. 939.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 45/95) of the Central Government Industrial Tribunal-cum-Labour Court, Chandigarh as shown in the Annexure, in the industrial dispute between the Employers in relation to the management of BBMB and their workmen, which was received by the Central Government on 18-03-2004.

[No. L-23012/9/94-IR(C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT CHANDIGARH

Presiding Officer : Shri S.M. Goel

Case No. I.D. 45 of 1995

Chairman, Nangal Bhakra Mazdoor Sangh,
Qr. No. 35-G, Nangal Township,
Distt. Ropar (Pb.) ... Applicant.

Versus

1. Chief Engineer/
Generation, BBMB, Nangal
Township, Distt. Ropar (Pb.)

2. Executive Engineer,
Operation, Maintenance
Division (PW) Dhulkot,
Distt. Ambala (Haryana) ... Respondents.

APPEARANCES

For the Workman : Sh. R. K. Singh

For the Management : Mrs. Jyoty Kaushal

AWARD
Passed on 20-2-2004

Central Govt. vide notification No. L-23012/9/94-IR(C-II) dated 26-5-95 has referred the following dispute to this Tribunal for adjudication :

"Whether the change of designation of Sh. Baldev Singh by the management of BBMB from cableman to T/Mate, without notice, prejudicially affects the workman? If so, to what relief the workman is entitled to?"

2. The authorised representative of the workman made the statement that the workman does not want to pursue with the present reference. In view of the same the present reference is returned to the Ministry as withdrawn Central Govt. be informed.

Chandigarh S. M. GOEL, Presiding Officer
20-2-2004

नई दिल्ली, 19 मार्च, 2004

का. आ. 940.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, बी.बी.एम.बी. प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चंडीगढ़ (संदर्भ संख्या 19/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-2-2004 को प्राप्त हुआ था।

[सं. एल-23012/9/2002-आई.आर.(सीएम-II)]

एन. पी. केशवन, डैस्क अधिकारी

New Delhi, the 19th March, 2004

S.O. 940.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 19/2003 of the Central Govt. Indus. Tribunal-cum-Labour Court, Chandigarh as shown in the Annexure, in the industrial dispute between the management of Bhakra Beas Management Board, and their workmen, which was received by the Central Government on 18-03-2004.

[No. L-23012/9/2002-IR (CM-II)]

N.P. KESAVAN, Desk Officer

ANNEXURE

CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT CHANDIGARH

Presiding Officer :

Shri S. M. GOEL

Case No. ID 19 of 2003

Sh. Kalu Ram, S/o Sh. Gopala Ram C/o Sh. R. K. Singh, Secy. INTUC H. No. 35-G Nangal Township, Anandpur Sahib (Ropar) ....Applicant

VERSUS

The Chief Engineer, Operation System, Bhakra Beas Management Board, Sector 19-B, Madhya Marg, Chandigarh. .....Respondent

APPEARANCES :

For the Workman : Sh. R. K. Singh

For the Management : Shri Ram Singh

AWARD

Passed on 20-2-2004

Central Govt. *vide* notification No. L-23012/9/2002/IR(CM-II) dated 27/1/2003 has referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of BBMB in terminating the services of Sh. Kalu Ram S/o Sh. Gopala Ram is legal and justified? If not, to what relief he is entitled to?"

2. The authorised representative of the workman made the statement that the workman does not want to pursue with the present reference. In view of the same the present reference is returned to the Ministry as withdrawn. Central Govt. be informed.

Chandigarh :

20-2-2004 S. M. GOEL, Presiding Officer

नई दिल्ली, 22 मार्च, 2004

का. आ. 941.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय चेन्नई के पंचाट (संदर्भ संख्या 612/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-3-2004 को प्राप्त हुआ था।

[सं. एल-12012/267/98-आई.आर.(बी-II)]

सी. गंगाधरण, अवर सचिव

New Delhi, the 22nd March, 2004

S.O. 941.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 612/2001 of the Central Govt. Indus. Tribunal-cum-labour Court, Chennai as shown in the Annexure, in the industrial dispute between the management of Indian Bank and their workmen, which was received by the Central Government on 22-03-2004.

[No. L-12012/267/98-IR (B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

BEFORE THE CENTRL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT CHENNAI

Monday, the 16th February, 2004

PRESENT :

K. JAYARAMAN,

Presiding Officer :

INDUSTRIAL DISPUTE No. 612/2001

(In the matter of the dispute for adjudication under clause (d) Sub-section (1) and sub-section 2(A) of Section

10 of the Industrial Disputes Act, 1947(14 of 1947), between the management of Indian Bank and their workmen)

BETWEEN

Sri U. Chinnamuthu Asari	:	I Party/ Workman

AND

The Zonal Manager, Indian Bank, Chennai	:	II Party/ Management

APPEARANCE:

For the Workman	:	M/s. R. Viduthalai, M. Rangarajalu & L. N. Pragasam Advocates.
For the Management:		M/s. Aiyar & Dolia & N. Krishnakumar, Advocates.

AWARD

The Central Government, Ministry of Labour vide Notification Order No. L-12012/267/98-IR(B-II) dated 29-8-2001 has referred the following dispute to this Tribunal for adjudication :

> "Whether the action of the management of Indian Bank in removing the name of Sri U. Chinnamuthu Asari from the pannel of Jewel Appraiser w.e.f. 7-12-1996 is legal and justified? If not, what relief is he entitled to?"

2. After the receipt of the reference, it was taken on file as I.D. No. 612/2001 and notices were issued to both the parties and both the parties entered appearance through their advocates and filed their respective Claim Statement and Counter Statement.

3. The contention of the Petitioner in the Claim Statement is briefly as follows :

The Petitioner was employed as an appraiser in the Respondent/Bank at Kattukuppam branch in the year 1984. The Petitioner is a goldsmith by profession and his job is to inspect the jewels brought to the bank by the customers for obtaining jewel loan by pleadging the jewels. For the past 13 years the Petitioner has served in the Bank with blemishless record. While so, in the month of July, 1996 one Mr. Narayanan, a customer of Kattukuppam branch approached the bank for a jewel loan. The jewel brought by the customer was inspected by the Petitioner and the Petitioner noticed that the jewel was gold coated silver chain. Immediately, he approached the then Manager of thebank Mr. Vijayakumar and informed him about the nature of jewel handed over by Mr.Narayanan. But, the manager forced the Petitioner to give an appraisal certificate stating that Mr. Narayanan was well known to him. The Petitioner left with no other alternative was forced to certify the jewel and based on the same, a loan of Rs. 14,000 was sanctioned in favour of Mr. Narayanan. In the month of November, 1996, an inspection was conducted in the bank branch at Kattukuppam. In that, it was found that jewels pledged by Mr. Narayanan was fake jewellery. Immediately, notice was sent to Mr. Narayanan and the Petitioner and Mr. Narayanan accepted his guilt that jewels pledged by him were not genuine and requested the bank to adjust his deposit amount towards the loan amount. The then Manager failed to accept his guilt for having forced the Petitioner to issue an appraiser certificate and in turn, threatened the Petitioner with dire consequences of removal from service and forced him to give a letter in writing accepting the fault in the name of the Petitioner. Subsequently, without issuing any charge memo or show cuase notice or calling for his explanation, the Petitioner was removed from service w.e.f. 7-12-96 and his name was removed from the panel of Jewel Appraiser. This action of the Respondent /Bank was totally against the principles of natural justice. Even after several representations, the Respondent/Bank has not taken any steps. Therefore, the Petitioner raised a dispute before the Labour Commissioner and on its failure, he sent a failure report to the Central Govt. but the Central Govt. declined to refer the matter for adjudication. Subsequently in view of the order of the High Court in a similar matter the matter was referred to this Tribunal for adjudication. Without following the proper procedure prescribed under law, the Petitioner was removed from service in a vindictive manner. Therefore, the order of dismissal issued by the Respondent/Bank removing the Petitioner from service without following the service rules and regulations and Bipartite Settlement is arbitrary, illegal and against the principles of natural justice. Therefore, the statutory violation committed by the respondent/Bank renders the termination order as unsustainable in law. Therefore, the Petitioner may, therefore, is entitled to be reinstated in service with back wages and continuity of service.

4. As against this, the Respondent in its Counter Statement contended that no doubt the Petitioner was employed as an appraiser in the Respondent/Bank at Kattukuppam branch. He was not at all appointed into the services of the Respondent/Bank. To ascertain the genuineness and value of gold jewels pledged by borrowers, as a policy, the bank has been keeping one or two goldsmiths in a panel of Jewel Appraiser. The appraisal charges are directly paid to goldsmith collected from the customer. The system of keeping few goldsmiths in a panel is similar to that of Engineers/Valuers kept in a panel for valuation of building, land etc., similarly advocates are kept in panel of advocates of the bank for legal matters. Therefore, the panel of Jewel Appraisers are not appointed into the services of the bank and they are not under the administrative and disciplinary control of the bank. There is no privity contract between the bank and the panel of Jewel Appraiser. It is a fact that in the month of November, 1996, a periodical inspection was conducted in the bank

branch at Kattukuppam and during the verification, it was found that one packet of jewels pledged by Mr. Narayanan contained spurious jewels. When contacted, Mr. Narayanan stated that jewels in fact belonged to the Petitioner, who gave them to him for pledging the same in the bank and raising loan. Therefore, the real beneficiery of the transaction is Mr. Chinnamuthu Asari, the Petitioner herein and both of them have accepted the facts and signed the confessional letters. The acquisition made against the Branch Manager is false and is alleged to escape from the charges and divert the attention of the Tribunal. In view of the above fact, the Respondent/Bank felt that continuing the Petitioner in the penal was undesirable and accordingly, his name was dropped from the panel during December, 1996 and it was done after investigation made by an officer of the bank from Regional Office.Therefore, the question there being violation of principles of natural justice does not arise at all on account of the fact that he was never an employee of the bank and there is no privity of contract between the bank and the Petitioner. The appraiser with doubtful integrity and lack of honesty could not be continued in the panel of Jewel Appraisers. Since he was not appointed into the services of the bank, the question of holding domestic enquiry against the Petitioner who did not belong to regular establishment of the bank did not and does not arise at all. Therefore, the provisions of Bipartite Settlement, service rules and regulations have no application to the Petitioner. Hence, the Respondent prays that the claim may be dismissed with costs.

5. In these circumstances, the points for my consideration are—

(i) Whether the action of the management of Respondent/Bank in removing the Petitioner from the panel of Jewel Appraiser is legal and justified?

(ii) To what releif the Petitioner is entitled?

Point No. 1

6. In this case, the Petitioner has examined himself as WW1 and five documents were marked on his side as Ex. W1 to W5. On the side of the Respondent/Management, the then Manager of Kattukuppam branch namely Mr. G. Vijaya Kumar was examined as MW1 and 5 documents were marked as Ex. M1 to M5.

7. In this case, it is an admitted fact of both sides that the Petitoner joined as a Jewel Appraiser in the Respondent/Bank at Kattukuppam branch in the year 1984. It is also admitited that the Petitoner is a goldsmith by profession and his job is to inspect the jewels brought to the bank by customers for obtaining jewel loan by pledging the jewels and jewel loan will be granted only on the certificate given by the Appraiser.

8. On behalf of the Petitioner, it is contended that the Supreme Court and High Courts have held that job of Jewel Appraiser is like part time employees of the bank and they are entitled for proportionate wages and benefits as that of regular clerical award staff and therefore, the rules and regulations of the bank are applicable to the Petitioner. While so, during the month of November, 1996, an inspection was conducted in the Kattukuppam branch of the Respondent/Bank and it was found that jewels pledged by one customer Mr. Narayanan was spurious jewels and notices were issued to Mr. Narayanan and the Petitioner herein, and even before that even on the date of pledging of jewels, the Petitioner noticed that the jewel was gold coated silver chain and he immediately approached the then Manager Mr. G.Vijayakumar and informed him about the nature of the jewel handed over by Mr. Narayanan. Only because of the Manager's interference and force, the Petitioner has given the appraisal certificate and based on that certificate, loan was issued to Mr. Narayanan for Rs.14,000/-. But, at the time of inspection, the Manager failed to accept his guilt, on the other hand, he forced the Petitioner to give a confessional letter accepting the fault in the Petitioner's name and based on that the Respondent/ Bank removed the Petitioner from service w.e.f. 7-12-1996. Since the appraisers are part time employees, they are entitled to the benefits of rules and regulations and without following the proper procedure prescribed under law, service rules and regulations, the Respondent/Management has removed the Petitioner from service in a vindictive manner and therefore, the order passed by the Respondent/ Bank is arbitrary, illegal and against the principles of natural justice.

9. But, as against this, it is contended on behalf of the Respondent that Jewel Appraisers are not employees of the bank. There is no privity of contract between the bank and panel of Jewel Appraisers. They are coming to the bank on specified days on which the jewel loan applications are taken up for consideration. Since they are giving valuation certificate on certain specific days, the appraisers are not directly appointed in the bank as such the rules and regulations of the bank are not applicable to them and their service is only contract for service and therefore, the question of holding domestic enquiry against the Petitioner, who did not belong to regular establishment of the bank did not and does not arise at all.

10. In these circumstances, the point to be decided in this case is 'whether the Petitioner is entitled to the benefits of rules and regulations of the bank?' and whether holding of domestic enquiry is a must in this case?'

11. On behalf of the Petitioner, it is contended that even in the recent case 2001 II LLJ 345 ALL INDIA OVERSEAS BANK EMPLOYEES UNION, CHENNAI Vs. INDUSTRIAL TRIBUNAL CHENNAI AND ANOTHER, the Madras High Court has held the *"the claim of Jewel Appraisers in bank to be treated as part time workers* and therefore, the contention of the Respondent that Jewel

Appraisers are doing 'contract for service' and they are not entitled to the benefits of rules and regulations cannot be taken as law.

12. As against this, the learned counsel for the Respondent argued that even the Supreme Court has held that Jewel Appraisers are not entitled to the benefits of Bipartite Settlement and other rules and regulations and their work is only appraising the gold jewel pledged before the bank and they are not regular employees.

13. But, on consideration, I find there is no point in the contention of the Respondent/Bank because the High Court of Madras in the judgement 2001 II LLJ 345 after referring the Supreme Court judgements, has held that "in the matter of handling jewel loan, the Jewel Appraiser has been invested with greater responsibility and the entire borrowing as well as the retention of jewel in the bank is dependent upon the faithful and sincere services of Jewel Appraisers. In other words, there being no other documents to verify the genuineness of the gold pledged or the subsequent retention of it till it is returned back to the concened borrower at the time of discharge of the liability, the certificate issued by the jewel appraiser at every stage is given greater value and importance without which the whole transaction would be invalid" and further held that "it is too late in the day for the bank management to contend that the claims of jewel appraisers is far fetched or to be ignored on the footing that there was no contractual relationship of master and servant between the bank management and the jewel appraisers or that the nature of duties performed by jewel appraisers are so very frivolous or negligible in the consideration of the bank management so as not even to consider their claim for treating them on par with part time employees" and the High Court also held that "Jewel Appraisers are part time employees of the bank" and affirmed the award of the Industrial Tribunal. In such circumstances, I find there is no point in the contention of the respondent/rank that Jewel Appraisers are not employees of the bank and the provisions of Bipartite Settlement, service rules and regulations and the provisions of Industrial Disputes Act have no application is of no use.

14. In view of my above finding that Jewel Appraisers are part time employees, the next point to be decided in this case is "Whether the service of part time employee, namely the Petitioner in this dispute, has been terminated in a way known to law?"

15. But, on consideration of the entire evidence in this case, I find the Respondent/Bank has not followed the procedures as laid down under Bipartite Settlement and other provisions of Industrial Disputes Act. No doubt, it is true that in the inspection conducted during December, 1996 that one packet of jewels pledged by one Mr. Narayanan contained spurious jewels and Mr. Narayanan has redeemed the jewel after notice. But, it is the contention of the bank that since the Petitioner was appointed as a Jewel Appraiser on contract and since the Petitioner with doubtful integrity and lack of honesty could not be continued in the panel of jewel appraiser, he was removed from the panel of jewel appraiser on 7-12-96. Even assuming for an argument sake that the Petitioner is the root cast for the pledging of spurious jewels in the bank, he should be removed from the panel only through lawful means i.e. by holding a domestic enquiry. But, on the other hand, the Respondent/Bank has not taken any steps to conduct domestic enquiry and they alleged that since the Petitioner's engagement is only by contract, his contract has been terminated from 7-12-96.

16. In view of my finding that Jewel Appraisers are part time employees of the bank, the Respondent/Bank has to take action under Industrial Disputes Act. Even though, the Respondent/Bank contended that the Petitioner and Mr. Narayanan have also given confessional letters, I find the confessional letters have not been proved before the domestic enquiry and no charge has been framed against the part time employee and in such circumstances, I find the removal of the Petitioner as a jewel loan appraiser is arbitrary, illegal and against the principles of natural justice. Therefore, I find this point in favour of the Petitioner.

Point No. 2:

The next point to be decided in this case is to what relief the Petitioner/Workman is entitled?

17. In view of my finding that the termination of the Petitioner from the service of the Respondent is arbitrary, illegal and against the principles of natural justice, I find the Petitioner is to be reinstated in service and at the same time there is no bar on the Respondent/Management to proceed with the domestic enquiry against the Petitioner on the allegation that the Petitioner is responsible for the spurious jewels pledged in the bank. I direct the Respondent/Bank to reinstate the Petitoner Sri U. Chinnamuthu Asari into service with continuity of service. Since the Petitioner is alleged to be a part time employee, he is not entitled to any back wages. No Costs.

18. Thus, the reference is answered accordingly.

Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 16th February, 2004.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :—

For the I Party/Workman : WW1 Sri U.Chinnamuthu Asari

For the II Party/Management : MW1 Sri G.Vijayakumar

Documents Marked:—

For the I Party/Workman:—

Ex. No.	Date	Description
W1	15-05-97	Xerox copy of the lawyer notice issued by Petitioner to the Branch Manager.

W2	11-06-97	Xerox copy of the reply given by the bank.
W3	26-11-97	Xerox copy of the letter from Petitioner to Labour Officer raising industrial dispute.
W4	19-01-98	Xerox copy of the letter from Petitioner to Regional Labour Commissioner (Central) raising Industrial dispute.
W5	30-06-98	Xerox copy of the reply filed by the Respondent.

For the II Party/Management:—

Ex. No.	Date	Description
M1	Nill	Xerox copy of the signature of the Petitioner in letter dated 25-11-96 addressed to Branch Manager.
M2	20-11-96	Xerox copy of the letter from Mr. Narayanan to Branch Manager of Respondent/Bank.
M3	25-11-96	Xerox copy of the letter from Petitioner to Branch Manager of Respondent/ Bank.
M4	25-04-83	Xerox copy of the Circular of Respondent /Bank Regarding Empanelment of jewel appraisers.
M5	25-04-97	Xerox copy of the investigation report of the Bank Officer, Zonal Office.

नई दिल्ली, 22 मार्च, 2004

का. आ. 942.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक आफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/चेन्नई के पंचाट (संदर्भ संख्या आई. डी. 90/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-3-2004 को प्राप्त हुआ था।

[सं. एल-12012/142/2002-आई.आर.(बी-I)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 22nd March, 2004

S.O. 942.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID. No. 90/ 2002) of the Central Government Industrial Tribunal/ Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workmen, which was received by the Central Government on 19-03-2004.

[No. L-12012/142/2002-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Friday, the 6th February, 2004

PRESENT :

K. JAYARAMAN,

Presiding Officer

INDUSTRIAL DISPUTE NO. 90/2002

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the management of State Bank of India and their workmen)

BETWEEN

Sri A. Harry Rozario : I Party/ Workman

AND

The Chief General Manager, II Party/Management
State Bank of India,
Local Head Office, Chennai

APPEARANCE :

For the Workman : M/s. Aiyar & Dolia, R. Arumugam & N. Krishanakumar, Advocates.

For the Management : Mr. K. S. Sundar & M. Asha Devi, Advocates.

AWARD

The Central Government, Ministry of Labour vide Notification Order No. L-12012/142/2002-IR(B-I) dated 13-09-2002 has referred the following dispute to this Tribunal for adjudication :—

> "Whether the termination of the services of Shri A. Harry Rozario by order dated 21-6-2001 by the Management of State Bank of Inida is justified? If not, what relief is he entitled ?"

2. After the receipt of the reference, it was taken on file as I.D. No. 90/2002 and notices were issued to both the parties and both the parties entered appearance through their advocated and filed their respective Claim Statement and Counter Statement.

3. The allegations of the Petitioner Union in the Claim Statement are breifly as follows:—

The Petitioner was appointed in the respondent bank service as armed guard from 23-2-90. At the first instance, he was posted in Udhagamandalam Branch and then transferred to Jallipatti branch and subsequently, he was transferred to Kambalapatti Branch in 1994 and finally to Avinashi Branch. While so, on 23-12-99 when the Cash

Officer Sri K. Vairamuthu in Branch Manager's cabin stated that cash shortage is occurring in the branch frequently and if the shortage is known to Zonal Office, then the bank's name and his name will be tarnished and if a letter is obtained from the petitioner who is not related to cash department, then his name and bank's name will be protected. This, the letter was obtained by Mr. K. Vairamuthu to protect his interest and bank's interest. The Petitioner without knowing the implication and that too without knowing that the letter will be used against him has signed in that letter. Subsequently, the Petitioner was served with show cause notice dated 31-3-2000 alleging that he had stealthily removed six pieces of Rs. 10 notes on 22-12-99 from the currency note packets in the guise of helping and stitching the currency note packets; on 23-12-99 he had stealthily removed eighteen pieces of Rs. 10 notes from the currency note packets in the guise of helping and stitching the currency note packets; and on 23-5-2000 the Respondent Bank further issued a memo stating that the Petitioner had stealthily removed 18 pieces of Rs. 10 notes on 22-12-99 from the currency note packets in the guise of helping in stitching the currency note packets and similarly on 23-12-99 he had stealthily removed six pieces of Rs. 10 notes from the currency note packets in the guise of helping in stiching the currency note packets. The Petitioner's explanation was not accepted and an enquiry was ordered to be conducted. The Enquiry Offices acted in a biased manner and conducted the enquiry in one side manner. The said enquiry is not proper and fair and the Enquiry Officer has given a biased finding on 10-01-2001. It is totally perverse and one sided one. Then the Disciplinary Authority by an order dated 18-01-2001 proposed the punishment of discharge from service without furnishing a copy of the Enquiry Officer's report to the Petitioner. The Disciplinary Authority failed to follow the procedure and therefore, the action of the Disciplinary Authority is illegal and against the law. Without giving an opportunity to the Petitioner, the Disciplinary Authority sent a letter dated 8-3-2001 for personal hearing which is only an empty formality. By and order dated 18-4-2001 he confirmed the proposed punishment even without considering the various points raised in the personal hearing and even without producing the material documents, the enquiry was conducted in an one sided manner. The Enquiry Officer even though expressed that the Respondent/ Management could not prove the charges through an eye witness, but he committed perversity in coming to the conclusion that Petitioner committed the charges without there being any evidence. Without examining the material witnesses, the Enquiry Officer has come to the conclusion that the charge has been proved. The Enquiry Officer has failed to see that there is no direct or indirect evidence to show about the quantum of amount recovered from the Petitioner and in absence any such evidence, the conclusion of the Enquiry Officer is perverse and one sided. The Disciplinary Authority and Appellate Authority also have failed to consider the past unblemished record of service of the Petitioner. The order of discharge is an extreme one and capital punishment. Therefore, the enquiry proceedings is liable to be set aside by this Tribunal. The Petitioner has become a victim of circumstances which forced him to face the punishment of discharge and he was made as a scapegoat and an innocent man was penalised for no fault of him. Therefore, he prays that an award may be passed in his favour.

4. As against this, the Respondent in their Counter Statement alleged that no doubt the Petitioners worked in several branches as armed guard. Since the Petitioner had imdulged in serious and gross misconducts and such misconducts were proved in disciplinary enquiry held as per Bipartite Settlement which provide for a detailed process for conducting enquiry, resulting the Respondent/Bank in inposing the punishment of discharge with superannuation benefits as would be due otherwise at that stage without disqualification from future employment as per order dated 18-4-2001. The Petitioner while working as armed guard in Kambalapatti branch on 22-12-99 and 23-12-99 misappropriated cash in the guise of helping in stitching currency note packets. The misappropriation was located on 23-12-99 and the Petitioner volunteered and admitted that he had misappropriated the cash and executed a letter dated 23-12-99 giving details about the cash misappropriated by him. Therefore, the disciplinary enquiry was conducted and charges were framed against him. Since the Petitioner executed letter dated 23-12-99 accepting that he has committed misconducts, the Enquiry Officer has come to the conclusion that charges framed against him have been proved. The Enquiry Officer considering all the materials and documents and the evidence of the prosecution and the defence witnesses has come to the conclusion that the charges have been proved. The Disciplinary Authority, after considering the representation given by the Petitioner, has come to a conclusion and confirmed the punishment proposed by him earlier. Even the appeal preferred by the Petitioner was considered by the Appellate Authority independently and confirmed the punishment given by the Disciplinary Authority. In the enquiry proceedings, the Petitioner has availed the full opportunity. The misconduct of tampering with cash and stealthily removing cash from the note section/bundle and concealing the same are serious and grave misconducts and the Respondent/Bank has lost confidence in the Petitioner and hence the punishment was imposed. The punishment is reasonable and lenient and the Petitioner was not deprived of financial benefits. Since the Petitioner has lost his credibility with the Respondent/Bank, the Respondent/Bank lost confidence in the Petitioner and hence snapping of employer-employee relationship with benefits was imposed by way of punishment. Hence, for all these reasons, the Respondent prays that the claim may be dismissed with costs.

5. The points for my consideration are—

(i) "Whether the termination of Petition from service by the Respondent/Management is justified?"

(ii) "To what relief the Petitioner is entitled?"

Point :—

6. In this case, both sides have not examined any party as a witness. No document is marked on the side of the Petitioner, while the Respondent/Management has marked documents as Ex. M1 to M15. The case of the Petitioner is that the Petitioner who is an Ex-serviceman, while working as armed guard at Kambalapatti branch of the Respondent/Bank he has stealthily removed currency notes in the guise of helping and stitching the currency note packets and show cause notice was issued to him. Subsequently in the domestic enquiry he was found guilty of the charges framed against him and he was given punishment of discharge for the charges framed against him and his appeal was also dismissed by the Appellate Authority. Therefore, the Petitioner has raised an industrial dispute and as the conciliation ended in failure, the matter was referred to this Tribunal for adjudication.

7. The counsel for the Petitioner argued that the Enquiry Officer based his finding only on the alleged confessional letter given by the Petitioner. But, in reality, the confessional letter was obtained by the Cash Officer Mr. K. Vairamuthu on 23-12-99 to safeguard his interest and therefore, no reliance can be placed on the confessional letter alleged to have been given by the Petitioner. On the other hand, the Enquiry Officer has based his report only on the confessional letter given by the Petitioner and in his report, he has clearly stated that there is no material evidence to prove that the Petitioner has taken money from the bundle but only because the Petitioner has given the confessional letter, he has come to the conclusion that the charges have been proved against the Petitioner. In this case, the Petitioner has no connection with the cash department. Further, the oral and documentary evidence produced by the Respondent/Bank has not proved that he has got nexus with the charges framed against him. But the Petitioner has only become a victim of circumstances, which forced him to face the punishment of discharge. Practically the Petitioner was made as a scapegoat and only to safeguard the interest of Mr. K. Vairamuthu, the said letter was obtained from the Petitioner and used against him. It is his further argument that even though the confessional statement was obtained from the Petitioner and even though two witnesses have attested, the said confession letter, the said witnesses who were examined on the side of the Petitioner have clearly stated that though they have signed in PX1 namely the confessional letter given by the Petitioner, they have stated only to safeguard the interest of the bank's name and only to safeguard the interest of Cash Officer Mr. K. Vairamuthu, the said letter was obtained from the Petitioner and they have signed in the document. The Enquiry Officer has no other alternative except to say that the charges framed against the Petitioner have been proved. On the other hand, he placed reliance on PX1 i.e. confessional letter and has come to the conclusion that it was a voluntary one and given a finding that the charges have been proved, which is illegal and perverse. The learned counsel for the Petitioner further argued that it is a well settled law that after the receipt of the findings from the Enquiry Officer, the copy of the finding should be furnished to the delinquent employee and his submission should be obtained before taking a decision on the proposed punishment. But, on the other hand, the Disciplinary Authority has failed to follow the mandatory procedure and by not furnishing the copy of documents, the Petitioner was mostly prejudiced and he was mostly handicapped in presenting the case even in personal hearing, since the report copy was not given to the Petitioner and he was not able to know how he was found guilty of the charges framed against him and on this short ground alone, the order passed by the Disciplinary Authority is liable to be set aside. Again, the counsel for the Petitioner argued that the Enquiry Officer has held that there is no eye witness to the alleged incident, but he has based his finding on the alleged document, which was not proved before the enquiry. Therefore, the findings of the Enquiry Officer is perverse and one sided. Even the material documents namely currency note packets pertaining to 22-12-99 and 23-12-99 were not produced before the enquiry and without seeing all these material documents, the Enquiry Officer has come to the conclusion against the Petitioner which shows the perversity committed by him and on top of it, the Enquiry Officer when especially noted that the Petitioner has not worked in cash department on 22-12-99 and 23-12-99 and the Messenger alone worked on these days, he has come to the perverse conclusion that the charges framed against the Petitioner have been proved. In this case, the Branch Manager himself has admitted that no incident of stealing or removal of notes occurred prior to 23-12-99 and in such circumstances, the Enquiry Officer committed perversity when he has given the finding that even on 22-12-99 the alleged incident took place and in such circumstances, no reliance can be placed on the findings of the Enquiry Officer. In this case, he further argued that there is no direct or indirect evidence to show about the quantum of amount recovered from the Petitioner and there was no proof that shortage was recovered from the Petitioner. But, in spite of no evidence, the Enquiry Officer gave the perverse finding. Furthermore, his perversity is clear from the fact that on 23-12-99, which was a non-banking day, the cash was stealthily removed by the Petitioner, who was no connection with the cash transaction. The finding of the Enquiry Officer is not based on any evidence and therefore, the order of termination passed by the Respondent/Management is illegal and is liable to be set aside.

8. As against this, the counsel for the Respondent argued that the story given by the Petitioner that only to safeguard the interest of the bank and to safeguard the interest of Mr. K. Vairamuthu, he has executed the letter cannot be believed because when he has no connection with cash transaction for what reason, he has executed the letter under PX1 confessing that he has stealthily removed the cash from the bundle and further when an armed guard executed this kind of letter, it should be considered under what circumstances, he has executed this letter. In this case, an armed guard who is a security for the bank has executed the letter stating that he has stealthily removed the cash from the bundle, no one can say that he has executed this letter under coercion or undue influence. Further, under what circumstances his words can be believed. In this case, it is not the case of the Petitioner that he has executed this confessional letter under coercion or undue influence or by forced. Under such criumstances, there is no doubt that he has stealthily removed the cash amout from the Bundle and on verification, he has admitted his guilt and executed this letter. In this case, even though the Petitioner has stated that he believed the words of Mr. K. Vairamuthu and he executed this letter the words said to have been stated by Mr. K. Vairamuthu are only to safeguard the interest of the bank and to safeguard his name, he has asked the Petitioner to execute the letter, but it is rarely to believe that only because of these words the Petitioner without knowing the implication has executed this letter. Learned counsel further argued that anyhow, the bank has lost confidence in the Petitioner. The Petitioner was working as armed guard where the confidence on the Petitioner is a paramount for the success of the banking business. The effect of continuance of the employment of such a person like the Petitioner, who has failed in his conduct was also evident by his act. The risk of the bank in employing such a person who had patently done misconduct and harmed the bank's reputation is evident. The misconduct committed by the Petitioner-armed guard has been proved after due enquiry in which the petitioner has fully participated. Under such circumstances, the order passed by the Disciplinary Authority or Appellate Authority cannot be questioned before this Tribunal and therefore, the Respondent prays that the claim of the Petitioner is to be rejected.

9. But, again on behalf of the Petitioner, it is contended that the mandatory procedure has not been followed in this case and the finding of the Enquiry Officer is perverse and one sided and no material document has been produced in the enquiry and even against his own finding that there is no material evidence, the Enquiry Officer has expressed his perversity by stating that the confessional letter which was not accepted and proved before him and based on the one sided report, the Disciplinary Authority has come to the conclusion to discharge the Petitioner from service. Under such circumstances, the impugned order has to be set aside and the petitioner is to be reinstated in service. It is his further argument that the Petitioner is an Ex-serviceman. He served in Indian Army for nearly sixteen years and retired as Naik after participating in Bangladesh war during 1971 and Blue Star operation at Amritsar in 1985 and in such circumstances, it is futile to contend that Ex-serviceman has stealthily removed the currency notes in which he has no contact or connection at the time of occurrence.

10. I find much force in the contention of the learned counsel for the Petitioner. Though I find that the order passed by the Disciplinary Authority is not in accordance with the mandatory provisions, the confidence of the Respondent/Bank in armed guard is a paramount and continuance of employment of such a person, who alleged to have committed fraud on the bank would be prejudicial to the interest of the Bank. Under such circumstances, though I find that the finding of the Enquiry Officer against the Petitioner is not valid in law, the Petitioner cannot be reinstated in his previous job. Under such circumstances, I find payment of compensation by the Respondent/Bank to the Petitioner is a justifiable one. It is alleged that the Petitioner has joined as an armed guard only in the year 1992 and therefore, I find an amount of Rs. 50,000/- (Rupees Fifty Thousand only) will be a reasonable amount of compensation instead of ordering reinstatement of the Petitioner into service.

11. In view of my foregoing findings, I direct the II Party/Management to pay an amount of Rs. 50,000/- (Rupees Fifty Thousand only) towards compensation to the Petitioner Sri A. Harry Rozurio within a period of three months from date of receipt of this Award. No. Costs.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 6th February, 2004.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:—
On either side : None
Documents Marked:—
For the I Party/ Workman : Nil
For the II Party/Management :

Ex No	Date	Description
M1	7-2-2000	Xerox copy of the Letter from the Respondent/ Bank to Petitioner calling for explanation
M2	31-3-2000 25-5-2000	Xerox copy of the chargesheets issued to Petitioner
M3	15-4-2000	Xerox copy of the letter from Petitioner to Disciplinary Authority requesting time to submit reply.
M4	14-7-2000	Xerox copy of the order appointing Enquiry Officer
M5	14-7-2000	Xerox copy of the letter from Enquiry Officer to Delinquent employee

M6	17-10-2000	Xerox copy of the enquiry proceedings.
M7	10-1-2001	Xerox copy of the enquiry report.
M8	18-1-2001	Xerox copy of the order passed by Disciplinary Authority proposing punishment.
M9	8-3-2001	Xerox copy of the Letter forwarding enquiry report & Order.
M10	23-3-2001	Xerox copy of the letter from petitioner to Disciplinary Authority.
M11	18-4-2001	Xerox copy of the order of Disciplinary Authority Imposing punishment of discharge.
M12	16-6-2001	Xerox copy of the letter from Petitioner to Appellate Authority
M13	16-6-2001	Xerox copy of the proceedings of personal hearing before Appellate Authority
M14	18-1-2001	Xerox copy of the final order of Appellate Authority
M15	Nil	Xerox copy of the service sheet.

नई दिल्ली, 22 मार्च, 2004

का. आ. 943.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टैन्डर्ड चार्टर्ड ग्रिण्डलेज बैंक लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या आई. डी. 87/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-3-2004 को प्राप्त हुआ था।

[सं. एल-12012/145/2002-आई.आर.(बी-I)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 22nd March, 2004

S.O. 943.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award I.D. No. 87/2002 of the Cent. Govt. Indus. Tribunal/Labout Court, Chennai now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Standard Chartered Grindlays Bank Ltd. and their workman, which was received by the Central Government on 19-03-2004.

[No. L-I2012/145/2002-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT CHENNAI

Thursday, the 19th February, 2004

PRESENT:

K. JAYARAMAN, Presiding Officer

INDUSTRIAL DISPUTE No. 87/2002

(In the matter of the dispute for adjudication under clause (d) of sub-section 1 and Sub-section 2(A) of Section 10 of the Industrial Disputes Act. 1947(14 of 1947), between the management of Standard Chartered Grindlays Bank Ltd. and their workmen)

BETWEEN

Sri M. Penchalaiah : I Party/workman

AND

The Area Manager-Employee : II Party/Management
Relations SI,Standard
Chartered Grindlays Bank
Ltd., Chennai

APPEARANCE:

For the Workman : M/s. Adrian D. Rozario, Sheela D. Rozario & K. Velmurugan, Advocates.

For the Management: M/s. T. S. Gopalan & Co, Advocates.

AWARD

The Central Government, Ministry of Labour vide Notification Order No. L-12012/145/2002-IR(B-I) dated 9-09-2002 has referred the following dispute to this Tribunal for adjudication :

"Whether the termination of the services of Shri M. Penchalaiah with effect from February, 1997 by the management of Standard Chartered Grindlays Bank Ltd. is justified? If not, what relief is he entitled to?"

2. After the receipt of the reference, it was taken on file as I.D. No. 87/2002 and notices were issued to both the parties and both the parties entered appearance through their advocates and filed the Claim Statement and Counter Statement respectively.

3. The contention of the Petitioner in the Claim Statement is briefly as follows:-

The Petitioner joined the services of the Respondent/ Management as a worker/messenger on 28-10-95 and he was posted to its brach in Eldorodo building at Nungambakkam and worked there. Subsequently, he was again transferred to main office and worked there till his

sudden termination in February, 1997. The work discharged by the Petitioner was no way different from the work discharged by permanent worker/messenger. The Respondent/ Management informed the Petitioner that his service would be regularised in due course. But, however, he was suddenly terminated in February, 1997. The termination was a oral one. He received no notice nor was any enquiry held before his termination. His request for reinstatement went in futile. The persons who had joined with the Petitioner are still working. Further fresh recruitment was also done in the year 1990. Therefore, the Petitioner has been discriminated against and he has been denied employment. The termination of the Petitioner is in contravention to statutory provisions, principles of natural justice and fair play. Hence, he prays that an award may be passed in his favour.

4. As against this the Respondent in its Counter Statement alleged that only from communication from the Assistant Labour Commissioner (Central) Chennai, this Respondent came to know the contention of the Petitioner. The said petition was made after four years of the alleged termination. No record was available for ascertaining whether the Petitioner was employed in Respondent/ Management or in what capacity his services were utilised and what was his status. When the enquiry was made with the officers who were working in Grindlays Bank branch at Eldorodo building and Rajaji Salai, they vaguely remembered that the Petitioner was used to be engaged as a temporary sub-staff whenever any permanent sub-staff was going on leave, that such engagements were used to be far and few between and he was not employed in the services of Grindlays Bank. The Respondent is the successor of Grindlays Bank, therefore, not in possession of any documentary evidence as to whether he was engaged and as to whether he was employed in the services of the Grindlays Bank. The Petitioner is to prove that he has been terminated in February, 1997 by the Respondent. Since the Petitioner was not an employee in the services of ANZ Grindlays Bank, there is no scope for termination of employment of the Petitioner. Therefore, the Petitioner cannot maintain any claim against the Respondent. Hence, he prays that the petition may be dismissed with costs.

5. In such circumstances the points for my determination are-

(i) "Whether the termination of the services of the Petitioner from February, 1997 by the management of Respondent is justified ?"

(ii) "To what relief the Petitioner is entitled?"

6. In this case, after several adjournments, the case was finally posted on 12-1-2004. But, neither the Petitioner nor his counsel on record present and there was no reason for adjourning this case on that date and therefore, the Petitioner was called absent and set exparte. Therefore, from the available records and from the proof of affidavit of the Respondent, this Tribunal is to pass the Award.

7. In the proof of affidavit filed on behalf of the respondent, one Mr. K. Ronald Devapalan, Head of Case Unit and Contact Centre has stated that only after the receipt of notice from Assistant Labour Commissioner(Central), Chennai, they came to understand the case of the Petitioner. After searching the records and made enquiries, whether the Petitioner was employed by ANZ Grindlays Bank, he came to know that the Petitioner was not employed by ANZ Grindlays bank and he was engaged as temporary sub-staff against leave vacancies of permanent sub-staff. There was a directive that no sub-staff should be employed for more than 89 days. He was not an employee of ANZ Grindlays Bank. The Petitioner alleged that he was not engaged after February, 1997 but he has made his first representation in the year 2001. But, he has not produced any document to show that he was employed by ANZ Grindlays Bank. Therefore, the claim of the Petitioner is to be rejected by this Tribunal.

8. In this case, the Petitioner has not produced any document to show that he was engaged by ANZ Grindlays Bank Ltd., since the burden is upon the Petitioner to prove that he was engaged by the Respondent/Management and his engagement was more than 240 days in a calendar year. It is not proved in this case that the Petitioner was employed or engaged by the Respondent/ Bank. As such, I find the allegation of the Petitioner that he was terminated from service by the Respondent from February, 1997 is not ture. As such, I find this point against the Petitioner.

Point No.2:—

The next point to be decided in this case is of what relif the Petitioner/workman is entitled?

9. In view of my finding that the contention of the Petitioner is not true, I find the Petitioner Sri M. Penchalaiah is not entitled to any relief in this case. No. Costs.

10. The reference is disposed of accordingly.

(Dictated to the P.A. transcribed and typed by him, corrected and pronounced by me in the open court on this day the 19th February, 2004.)

K. JAYARAMAN, Presiding Officer

नई दिल्ली, 22 मार्च, 2004

का. आ. 944.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सीनियर पोस्टमास्टर, हेड पोस्ट ऑफिस के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 38/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-3-2004 को प्राप्त हुआ था।

[सं. एल-40012/11/97-आई.आर.(डी.यू.)]

कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 22nd March, 2004

S.O. 944.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. No. 38/2002 of the Cent. Govt. Indus. Tribunal Court, Chennai as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Senior Postmaster, Head Post Office and their workmen, which was received by the Central Government on 22-03-2004.

[No. L-40012/11/97-IR (DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE THE CENTRL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT CHENNAI

Wednesday, the 11th February, 2004

PRESENT:

K. JAYARAMAN,

Presiding Officer :

INDUSTRIAL DISPUTE NO. 38/2002

(In the matter of the dispute for adjudication under clause (d) of Sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act 1947(14 of 1947), between the management of Postal Department and their workmen)

BETWEEN

Sri E. Ganesan : I Party/ workman

AND

The Senior Post Master, H.P.O. Nagercoil. : II Party/Management

APPEARANCE :

For the Workman : Sri A.S. Ranganathan & U.Padmanabhan, Advocates.

For the Management : Mr. C. P. R. Kamaraj, ACGSC

AWARD

The Central Government, Ministry of Labour vide Notification Order No. L-40012/11/97-IR(DU) dated 27-03-2002 has referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of Senior Postmaster, Head Post Office, Nagercoil in terminating the services of Sri E. Ganesan w.e.f. 10-11-1991 is just and legal? If not, to what relief the workman entitled to?"

2. After the receipt of the reference, it was taken on file as I.D. No. 38/2002 and notices were issued to both the parties and both the parties entered through their advocates and filed their respective Claim Statement and Counter Statement.

3. The allegations of the Petitioner Union in the Claim Statements are briefly as follows :—

The Petitioner was selected and employed as Grade D postal employee with the Respondent department from 17-5-89. The Petitioner was sponsored candidate from Employment Exchange for selection and was posted to work as postman/grade D on provisional basis by the Respondent. The Petitioner reported to the department on 25-5-89 as directed and he was allotted grade D work by the Respondent and he was working as such till his non-employment. The allocation of work to the Petitioner was at the will and pleasure of the Respondent and on many days the workman returned home, since the Respondent did not allocate work to him. The Respondent have given preference to the EDA (Extra Departmental Agent) employees and allocate work to them. Even to the arbitrary and unjustified method adopted by the Respondent the workman was able to get 250 days of work between 1989-1991. The Petitioner has given a representation that posting preference or at least equal chance with EDA employees and this representation was not appreciated and he did not get any positive action from the Respondent, but it had its own adverse effect. Therefrom 10-11-91, the Respondent refused to give any posting and work to the Petitioner. He was also informed not to report for allocation of work in future. The Respondent did not give any order in writing to the said effect. The action of the Respondent is not only arbitrary but also illegal and it is opposed to principles of natural justice and provisions under Industrial Law. The Petitioner preferred an application under O.A. No. 1052/93 before Central Administrative Tribunal and the Tribunal advised the Petitioner to seek remedy before the conciliation officerty raising an industrial dispute. Subsequently, he raised the industrial dispute before the Regional Labour Commissioner (Central) Chennai but due to non-co-operation of the Respondent, the Petitioner could not get any remedy and the Labour Commissioner submitted his failure report on 27-1-97. The Government also refused to refer the dispute by its order dated 3-4-97 for adjudication before the Tribunal. Therefore, the Petitioner preferred a Writ Petition before the High Court of Madras and the High Court had directed the Government to refer the dispute for adjudication. Hence, this dispute was referred to this Tribunal. Therefore, the Petitioner prays that an award may be passed in his favour.

4. As against this, the Respondent in the Counter Statement alleged that it is no doubt true that the Petitioner is a sponsored candidate of Employment Exchang, Nagercoil to work as an outsider in Nagercoil Head Post Office and outsider is an individual who is not a regular employee of the Department of Posts, who could be deployed against leave vacancies purely on temporary basis on a day to day

basis after exhausting the deployment of Extra Departmental Agents. The EDAs are given priority for the deployment against the temporary leave vacancies, because they have the experience and trained to carry on the work of postman/ group D. Further, by virtue of their being EDAs, they have furnished security bonds to cover the risk of handling valuable postal articles during their course of duty. Even the EDAs are not departmental employees and they are part time workers and do not receive any pensionary benefits. Their pay is a fixed one depending upon the sphere of duty. Therefore, the contention of the Petitioner in this case is wrongly placed. The Petitioner has actually performed 224 days of duty in different days during 1989-91 as per records against 250 days claimed by the Petitioner. This Respondent has never stopped the Petitioner, on the other hand, when his contention of equating himself with EDAs was not materialised, he on his own volley stopped from reporting to ascertain the vacancies from 10-11-1991 and as such the contention of the Petitioner is not correct. The Petitioner after keeping quite for a period of four years, made the petition before the Regional Labour Commissioner (Central) seeking for conciliation of the dispute and to secure employment in the department. The Ministry of Labour, New Delhi stated that the Central Government do not consider this case as a fit case for adjudication inasmuch as the Petitioner was engaged against temporary leave vacancies of short term duration and he did not put in 240 days of service within a period of two years to be eligible for protection under the Industral Disputes Act and he left the service on his own and his services were never terminated by the Respondent/ Management. Hence, the Respondent prays that the claim of the Petitioner may be dismissed with costs.

5. In these circumstances, the points for my determination are—

(i) "Whether the action of the Respondent/ management in terminating the services of the Petitioner w.e.f. 10-11-91 is just and legal?"

(ii) "To what relief the Petitioner is entitled?"

Point No. 1 :

6. In this case, the Petitioner has examined himself as WW1 and marked three documents as Ex.W1 to W3 and on the side of the Respondent the Senior Postmaster, Nagercoil Head Post Office was examined as MW1 and five documents were marked namely Ex. M1 to M5 in which Ex. M4 is series.

7. On behalf of the Petitioner, it was contended that the Petitioner was employed as Group D postal employee and he was sponsored by the Employment Exchange for the selection of departmental Group D on provisional basis by the Respondent and therefore, he has also worked more than 250 days of work between the years 1989 to 1991 and the Petitioner is to be regularised in service, but on the other hand he has been illegally terminated from service from 10-11-1991 but he has not been issued with notice of termination. On behalf of the Petitioner reliance was placed on the document Ex. W1 wherein the District Employment Officer, Nagercoil has sent a communication regarding a vacancy for group D/postman in the pay of Rs. 750 plus allowances per mensum with the Head Post Office, Nagercoil and the interview date has been fixed on 17-4-89. Even though it is stated that based on his provisional appointment only for a permanent vacancy, he has been called for an interview and again reliance was placed on Ex. W2 which is another communication from the Senior Postmaster, Head Post Office, Nagercoil stating that interview for the Petitioner is to be held on 3-5-89 at 11 a.m. The Petitioner also produced Ex. W3 which is a communication to the candidates sponsored by the Employment Exchange stating that the Petitioner is directed to report before the Senior Postmaster, Nagercoil for the post of Group D cadre. Relying on all these documents, the learned counsel for the Petitioner argued that the Petitioner was selected for Group D post, and not on a temporary basis that too on casual basis. Under such circumstances, his services is to be regularised and further he has completed more than 250 days during 1989-91. Under such circumstances, the termination made by the Respondent is illegal and opposed to principles of natural justice and the provisions of Industrial Law.

8. But, as against this, the learned counsel for the Respondent argued that the Petitioner was not selected for a regular post. Though he has been sponsored by the Employment Echange, he was called to work as an outsider in Nagercoil Head Post Office and an outsider is an individual, who is not a regular employee of the postal department and he would be deployed against the leave vacancy purely on temporary basis/casual basis on a day to day basis after exhausting the deployment of Extra Department Agents. Further the EDAs, who are appointed as part time workers and do not receive any pensionary benefits and their pay is also a fixed one depending upon the sphere of duty. The EDAs are given priority for deployment against the temporary leave vacancies because they have experience and trained to carry on the work of postman/group D. Further, by virtue of their being EDAs, they have furnished security bonds to cover the risk of handling valuable postal articles during their course of duty. Under such circumstances, the Petitioner cannot get any preference against the EDAs. Though the Petitioner has produced Ex. W1 to W3, these are only communications sent by Employment Exchange Office and also the Senior Post Master, Nagercoil Head Post Office with regard to his interview. But along with this communication, particulars with regard to the post has been clearly stated and in that it is clearly stated that the interview is only for the work as an outsider against the leave vacancies purely on temporary basis and in such

circumstances the Petitioner cannot claim any preference over the EDAs. It is the further contention of the learned counsel for the Respondent that the Petitioner has not actually performed 250 days as alleged by him, but actually performed only 224 days and the Respondent has produced documents namely Ex. M4, Xerox copies of salary bills in respect of the Petitioner. From these documents it is clear that the Petitioner has worked for only 224 days i.e. in the year 1989 for 22 days; in the year 1990 for 85 days; and in the year 1991 for 117 days, totalling to 224 days and therefore, he cannot claim any benefits under the Industrial Disputes Act. It is the further contenion of the Respondent that the Respondent never stopped the petitioner from engaging him as a temporary service, on the other hand, when his contention of equating himself with EDAs was not materialised, he on his own volley stopped from reporting to the officer concerned to ascertain the vacancies from 10-11-91 and therefore, the Petitioner's contention that he has been terminated from service with effect from 10-11-91 is not correct. Further, the counsel for the Respondent placed reliance on the order of Central Administrative Tribunal dated 18-4-1994 in a smaller matter, wherein some of the persons who have been selected (sponsored by Employment Exchange) like the Petitioner, have filed an application to utilise their (Petitioners) services in the resultant vacancies in preference to EDAs, it was rejected by the Central Administrative Tribunal for various reasons and even assuming that the Respondent has terminated the services of the Petitoner on 10-11-91, he has not taken any steps for more than four years to question the same and after a long lapse of time, he has raised this industrial dispute without any valid reasons.

9. Though, I find some force in this contention, I find the Respondent cannot question the right of the Petitioner to raise the dispute because this dispute was raised at the first instance before the Regional Labour Commissioner (Central) and on failure of conciliation, the Govt. has not referred the matter to Tribunal and only after filing the Writ Petition against the Govt. and only on the direction of the High Court, the reference was made by the Govt. to this Tribunal and in such circumstances, the Respondent cannot question the delay caused in referring the dispute to this Tribunal. Any how, in this caee, the point to be decided is whether the non-employment of Petitioner is illegal and unjustified. Since it is clearly established by the Respondent that the Petitioner has been taken on temporary/casual basis to deploy the Petitioner as an outsider, he cannot claim any preference over the Extra Departmental Agents, who are appointed as temporary part time workers. Therefore, the contention of the Petitioner that he has worked more than 250 days between 1989 and 1991 is also not true. Under such circumstances, the contention of the Petitioner that he has heen taken as a Group D/Postman on regular basis is not valid. I think, the Petitioner has taken advantage of the words mentioned in the intimation card Ex. W1 and raised this claim against the Respondent/ Management. When the Extra Departmental Agents are available to work against leave vacancies in the postman cadre, I think, they cannot utilise the additional casual labourers for that post. Therefore, I find this point against the Petitioner.

Point No. 2 :—

The next point to be decided in this case is to what relief the Petitioner is entitled?

10. In view of my finding that the action of the Respondent/Management in terminating the services of Petitioner Sri. E. Ganesan is legal, I find the Petitioner is not entitled to any relief, as claimed by him.

11. The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 11th February, 2004.).

K. JAYARAMAN, Presiding Officer

Witnesses Examined :—

For the I Party/Workman : WW1 Sri E..Ganesan

For the II Party/Management : MW1 Sri H. Nambi.

Documents Marked:—

For the I Party/Workman:—

Ex.No.	Date	Description
W1	10-04-89	Original call letter for interview on 17-4-89 Received by the Petitioner from Employment Exchange.
W2	25-04-89	Xerox copy of the letter from Respondent to the Petitioner to attend the interview on 17-4-89.
W3	Nil	Xerox copy of the phone message dated 15-5-91. Regarding the Petitioner's appointment.

For the II Party/Management:—

Ex No.	Date	Description
M 1	23-12-93	Xerox copy of the circular issued by Respondent.
M 2	18-04-94	Xerox copy of the order of Central Administrative Tribunal.
M 3	Nil	Xerox copy of the services particulars of Petitioner. As an outsider from 1989 to 1991.
M 4 Series	Nil	Certified copies of salary bills for 212 days.
M 5	03-04-97	Letter from the Ministry of Labour to I Party & II Party giving reasons for non-referring of dispute for adjudication.

नई दिल्ली, 22 मार्च, 2004

का. आ. 945.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार जनरल मैनेजर, टेलीकॉम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 22/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-3-2004 को प्राप्त हुआ था।

[सं. एल.-40012/138/2002-आई.आर. (डी.यू.)]

कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 22nd March, 2004

S.O. 945.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 22/2003) of the Central Government Industrial Tribunal/ Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of General Manager, Telecom and their workman, which was received by the Central Government on 22-3-2004.

[No. L-40012/138/2002-IR (DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Monday, the 9th February, 2004

Present : K. JAYARAMAN, Presiding Officer

INDUSTRIAL DISPUTE NO. 22/2003

(In the matter of the dispute for adjudication under clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of O/o. General Manager, Telecom, and their workmen).

BETWEEN

Sri A. Ponnusamy : I Party/Workman

AND

1. The Sub Divisional Engineer(Telegraphs), O/o. General Manager Telecom, Virudhunagar. : II Party/Management

2. The General Manager, Telecommunications, Virudhunagar.

Appearances :

For the Workman : Sri S. Vaidyanathan, Advocate.

For the Management : M/s. Santharam Natarajan G. Vijayakumar & J. Yuvaraj Shekar, Advocates

AWARD

The Central Government, Ministry of Labour vide Notification Order No. L-40012/138/2002-IR (DU) dated 14-11-2002 has referred the following dispute to this Tribunal for adjudication :—

> "Whether the action of the management of General Manager, Telecom in terminating the services of Sri A. Ponnusamy w.e.f. 7-9-99, part time casual labourer is just and legal? If not, the relief entitled to the workman?"

2. After the receipt of the reference, it was taken on file as I.D. No. 22/2003 and notices were issued to both the parties and both the parties entered through their advocates and filed their respective Claim Statement and Counter Statement.

3. The allegations of the Petitioner Union in the Claim Statement are briefly as follows :—

The Petitioner was employed as messenger in telegraph office at Rajapalayam. He was asked to do the work of Water Carrier -cum-office boy during day and night shift. He joined the service on 1-4-94. Since he was not confirmed he made representation to the Telecom District Manager, Virudhunagar and General Manager, Virudhunagar. Since his regularisation was not acceded to, he filed O.A. No. 725/99 before Central Administrative Tribunal, Madras Bench. The Tribunal passed an order on 9-8-99 directing the Respondents to pass orders on merits on the representation dated 11-12-99 within the period of eight weeks from the date of receipt of the order. On 31-12-99 the General Manager, Telecommunication, rejected the Petitioner's representation on the ground that he was not at all employed in D.T.O. Rajapalayam and in the meantime, after the receipt of the order of Central Administrative Tribunal, Madras, the Respondent denied employment w.e.f. 7-9-99. The action of the Respondent in terminating the services of the Petitioner is violative of principles of natural justice and arbitrary. He was terminated only because, he placed a demand for regularisation and approached the Central Administrative Tribunal. The Petitioner has completed 240 days of continuous service in a period of 12 calendar months preceding the date of his termination. He has completed 480 days of continuous service in a period of 24 calendasr months as such the Petitioner is deemed to have attained permanent status as per Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workman) Act, 1981. Further, the Respondents were not complied with the provisions of Section 25F of the Industrial Disputes Act. The Respondent instead of acting as a model employer has adopted unfair labour practice and denied the employment to the Petitioner. Even the concili-

ation officer in his failure report had stated that the Petitioner had completed 245 days, on perusal of the records of the Respondent. The BSNL namely the Respondent is an Industry. The post in which the petitioner was working is a sanctioned post and the work is of perennial in nature. Hence, the Petitioner prays that an Award may be passed in his favour.

4. As against this, the Respondent in its Counter Statement alleged that the Department of Posts & Telegraphs is not an industry and in view of the same, this Hon'ble Tribunal has no jurisdiction to entertain the claim of the Petitioner. The Petitioner has approached the Central Administrative Tribunal for his grievance and obtained a direction and the Respondent has passed appropriate orders on 31-12-99 on merits. Hence, it is not open to him to challenge the orders already passed by the Respondent in any other legal competent forum other than Administrative Tribunal. The Petitioner has unlawfully tampered with the records from office of the Respondents and for his unlawful act, when it was decided to initiate criminal proceedings against him, he has come out with a false story through this petition. The Government of India has issued orders that their employees are governed by statutory regulations and hence they would not come under the purview of Industrial Disputes Act. The Petitioner has worked with several intervals in at least four offices contemporaneously in different cadre of service. The Respondents can ably falsify the statement as to number of working days and hours claimed by him. The provisions of Industrial Disputes Act nor the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workman) Act, 1981 are supportive to the Petitioner's case. Hence, the Respondent prays that claim of the Petitioner may be dismissed with costs.

5. Again, the Petitioner has filed a reply statement, wherein he has alleged that the Petitioner has completed the required number of services to be made permanent as early as 16-9-99 and as per DoT No. 269-13/99-STN II dated 16-9-99 the Petitoner is deemed to have attained the status to full time Casual Labour as the said circular was given benefits retrospectively. Even in 1997 8 SCC 767 BSNL case, it is clearly established that BSNL is an industry. Since there was no adverse order against Central Administrative Tribunal judgement, there is no need for the Petitoner to challenge the order passed in O.A. Further, since the Central Administrative Tribunal has no power to take evidence, the only option for the Petitioner was to raise a dispute before this Tribunal. It is false to contend that this petitioner has tampered with records of the Respondent. Hence, he prays to allow his claim as prayed for.

6. In these circumstances, the points for my determination are :—

(i) "Whether this Tribunal has jurisdiction to entertain the claim of the Petitoner?"

(ii) "Whether the action of the management of Telecom in terminating the services of the Petitioner is just and legal?"

(iii) "To what relief the Petitoner is entitled?"

Point No. 1 :—

7. In this case, even though the Respondent has taken the plea that this Tribunal has no jurisdiction to entertain the case, as the BSNL is not an Industry, the learned counsel for the Respondent has not argued this point. However, in 1997 8 SCC 767 GENERAL MANAGER, TELECOM Vs. SRINIVASA RAO, the THREE members Bench of the Supreme Court has held that "the dominant nature test for deciding whether the establishment is an industry or not is summarised in para 143 of the judgment of Justice Krishna Iyer in Bangalore Water Supply case. It is not rightly disputed that according to this test the Telecommunication Department of the Union of India is an industry within that definition because, it is engaged in commercial activities and the department is not engaged in discharging any of the sovereign functions of the State" and therefore, the fact that Telecom Department is an industry under the Industrial Disputes Act, 1947 cannot be disputed at this stage.

Point No. 2 :—

8. The Petitioner alleged that he was working in the Telecom Department from 1-4-94 and he was working on daily wage basis. Since the Telecom Department has not regularised his services, he has filed the O.A. No. 725/99 before the Central Administrative Tribunal and the Tribunal passed an order on 9-8-99 directing the Respondent to pass orders on merits on the representation of the Petitioner. Enraged by this, the Telecom Department has terminated the Petitioner from service w.e.f. 7-9-99 and also rejected his claim on the ground that he was not employed in DTO, Rajapalayam. He was engaged by the Telecom Department, Virudhunagar from 1-9-94 is effectively proved by the receipts produced by him.

9. The counsel for the Petitioner argued that the document Ex. W20 has clearly established that the Petitioner has worked more than 240 days in a continuous period of twelve calendar months and worked for 480 days in a continuous period of 24 calendar months and therefore as per Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workman) Act, 1981, the services of the Petitioner should be regularised and he should be made permanent. He also relied on the ruling reported in ANDHRA BANK, SALEM Vs. INSPECTOR OF LABOUR AND ANOTHER, wherein the Madras High Court has clearly stated that "for the purpose of Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workman) Act, 1981 the definition of an establishment as defined in Shops Act had also been borrowed and not the other provisions of Shops Act. In such a situation, once an establishment falls within the

definition of establishment under clause (e) of Sub-section (3) of Section 3 of Permanent Status Act, it goes without saying that the provisions of the said Act are applicable in construing the conferment of permanent status to any workman, who fulfils the criteria as laid down under Sub-section (1) of Section 3 thereof, in the sense of completion of continuous service for a period of 480 days in a period of 24 calendar months notwithstanding anything contained in any other law for the time being in force, unless and until the Govt., invoking its power under section 9 of the Permanent Status Act exempts conditionally or unconditionally any employer or class of employers or any industrial establishment or class of industrial establishments from the provisions thereof. Therefore, provisions of clause (c) sub-section (1) of Section 4 of Shops Act exempting establishments in Central and State Governments is of no consequence." He further argued that the Respondent has not obtained any exemption from the said Act. It is applicable to the same and therefore, it cannot be said that Tamil Nadu Industrial Establishment (conferment of Permanent Status to Workman) Act, 1981, is not applicable to the Respondent. On behalf of the Petitioner, it is further argued that the Petitioner was given five hours regular work and though he has no documents in support of his contention, the Respondent's documents itself will prove that he has worked more than five hours and total hours per day was not less than ten hours and for over time work, he was paid and his signature was obtained in ACG 17 Receipts and the copy of the same is marked as Ex. W20. Therefore, it cannot be said that the Petitioner is not employed by Telegraph Department nor can say that he has not worked more than 240 days. Even before the conciliation officer, after verifying the records, he has clearly stated that the Petitioner has completed 245 days in a continuous period of twelve calendar months.

10. As against this, the counsel for the Respondent argued that with the help of somebody the petitioner has stealthily removed the vouchers relating to him and he contended that he has completed 240 days but on the other hand, on enquiry it is clear that the Petitioner has worked with several intervals in at least four office premises contemporaneously in different cadre of service and thus, he claimed that he has worked more than 240 days in 12 calendar months. But actually, he has not worked like that.

11. But, on consideration, I think the claim of the Respondent is not true and it is clear from the records produced by the Petitioner that the Petitioner has completed 240 days and as per the Circular DoT No. 269-13/99-STN-II dated 16-9-99, the Petitioner is to be regularised in service and he should be made permanent. As such, I find there is no point in the contention of the Respondent that the Petitioner has not completed 240 days in a continuous period of twelve calendar months. Therefore, I find this point in favour of the Petitioner.

Point No. 3 :—

The next point to be decided in this case is to what relief the Petitioner is entitled?

12. In view of the foregoing findings, I find the Petitioner Sri A. Ponnusamy is entitled to the relief as claimed for by him. But, in this case, the Petitioner has been terminated from service w.e.f. 07-09-1999, therefore, I find the Petitioner Sri A. Ponnusamy is entitled to only half of the back wages. Therefore, the Respondent/ Management is direct to reinstate the Petitioner Sri A. Ponnusamy into service with half back wages, continuity of service and other attendant benefits with effect from the date of termination. In these circumstances, there will be no order as to costs.

13. The reference is answered accordingly.

(Dictated to the P.A. transcribed and typed by him, corrected and pronounced by me in the open court on this day the 9th February, 2004).

K. JAYARAMAN, Presiding Officer

Witnesses Examined :—

For the I Party/Workman : WW1 Sri A. Ponnuchamy

For the II Party/Management : None

Documents Marked :—

For the I Party/Workman :

Ex. No.	Date	Description
W1	08-06-92	Xerox copy of the order of Central Administrative Tribunal.
W2	06-08-92	Xerox copy of the circular issued by Respondent Regarding conferment of temporary status to Casual mazdoors.
W3	11-01-99	Xerox copy of the representation submitted by Petitioner to District Manager, Telecom.
W4	Nil	Xerox copy of the representation submitted by Petitioner to General Manager, Telecom.
W5	Nil	Xerox copy of the representation submitted by Petitioner to General Manager, Telecom.
W6	09-08-99	Xerox copy of the order of Central Administrative Tribunal.
W7	24-12-99	Xerox copy of the 2A petition filed by Petitioner.
W8	Nil	Xerox copy of the written statement of Respondent.
W9	Nil	Xerox copy of the additional Counter Statment Filed by Respondent.

W10	Nil	Xerox copy of the 2nd additional Counter Statement Filed by Respondent.
W11	Nil	Xerox copy of the 3rd additional Counter Statement Filed by Respondent.
W12	Nil	Xerox copy of the counter filed by Petitioner to written brief submitted by Respondent.
W13	Nil	Xerox copy of the 2nd counter filed by Petitoner to written brief submitted by Respondent.
W14	31-12-99	Xerox copy of the letter of General Manager to Petitioner.
W15	29-09-2000	Xerox copy of the circular issued by Assistant Directorate General, Deptt. of Telecom Service, New Delhi regarding regularisation of Casual Labour.
W16	10-10-2000	Xerox copy of the circular issued by Chief General Manager, Chennai to all SSA heads regarding regularisation of Casual Labour.
W17	13-05-2002	Xerox copy of the failure of conciliation report.
W18	26-02-2002	Xerox copy of the letter from Chief General Manager to General Manager, BSNL.
W19	Nil	Xerox copy of the list of regularisation of Casual Labour.
W20	Nil	Xerox copy of the ACG 17 receipts.
W21	16-09-99	Xerox copy of the circular of DoT.

For the II Party/Management :—Nil

नई दिल्ली, 22 मार्च, 2004

का. आ. 946.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मद्रास एटोमिक पॉवर स्टेशन के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चेन्नई के पंचाट (संदर्भ संख्या 147/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-3-2004 को प्राप्त हुआ था।

[सं. एल. 42011/7/99-आई.आर. (डी.यू.)]

कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 22nd March, 2004

S.O. 946.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 147/2001) of the Central Government Industrial Tribunal/ Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Madras Atomic Power Station and their workman, which was received by the Central Government on 22-3-2004.

[No. L-42011/7/99-IR (DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Friday, the 13th February, 2004

Present : K. JAYARAMAN, Presiding Officer

INDUSTRIAL DISPUTE NO. 147/2001
(Tamil Nadu State Industrial Tribunal I.D. No. 143/99)

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Madras Atomic Power Station and their workmen)

BETWEEN

The General Secretary
Tamil Nadu Atomic Power
Employees' Union
Kalpakkam. ... I Party/Claimant

And

The Station Director,
Madras Atomic Power
Station, Kalpakkam. ...II Party Management

Appearance:

For the Claimant : M/s. D. Hariparanthaman, V. Ajoy Khose & P. Vijendran, Advocates.

For the Management : Sri T. Ravikumar, ASGC.

AWARD

The Central Government, Ministry of Labour vide Notification No. L-42011/7/99/IR(DU) dated 26-07-1999 has earlier referred this industrial dispute to Tamil Nadu State Industrial Tribunal for adjudication. The Tamil Nadu State Industrial Tribunal has taken the same on its file as I.D. No. 143/99 and after the constitution of this Central Govt. Industrial Tribunal-cum-Labour Court, the said industrial dispute was transferred to this Tribunal and after getting the records of this dispute, it was taken on file as I.D. No. 147/2001. The dispute referred by the Govt. in the Schedule is hereunder :—

"Whether the action of the management of Madras Atomic Power Station in withdrawing the practice of granting Rice Loan to their workmen is legal and justified? If not, to what relief they are entitled?"

2. After the reference was taken on file, notices were issued to both sides and both sides have filed the Claim Statement and Counter Statement respectively.

3. The contention of the Petitioner in the Claim Statement is briefly as follows :—

They I Party/Union representing all the workmen employed in the II Party/Management belonging to non-gazetted category. The II Party/Management power station was initially under the control of the Central Govt. and it was functioning under the Department of Atomic Energy, Bombay. The Madras Atomic Power Station commenced power generation operation from 1983. Earlier it was functioning as a project. In 1987 it was registered and incorporated a company under Companies Act in the name of Nuclear Power Corporation of India Ltd. After the incorporation of the said company, all the five power stations including the II Party/Management and the three power projects which were originally functioning under the control of the Department of Atomic Energy were transferred and vested with the newly formed Nuclear Power Corporation of India Ltd. The workmen were absorbed as employees of respective units of NPCIL with same conditions of service and continuity of service. Since all the power stations including the II Party/Management and power projects are situated in isolated and remote areas far away from cities and towns, various basic and civil amenities are not available and also lacking. Further they were not able to get goods with good quality and they have to pay exorbitant price. Therefore, the workmen will have to spend more if they purchase goods at Kalpakkam namely the II Party/Management's place. In order to overcome this costly affairs, the Respondent created a Co-operative Society for the supply of essential commodities and other household items to the workmen of the II Party/Management at an affordable fair and reasonable price. Since the rice is the most vital one among the essential commodities required for every workmen and their family members and since the workmen were not able to purhcase goods and fine quality rice and since they had to pay very high and exorbitant price, if they had to purchase rice from open market which was not affordable, about 25 years back, the issue was taken up by the Union and after a prolonged efforts, the then Project Engineer agreed to formulate a scheme in this regard and rice loan scheme was framed with the concurrence of both the parties. As per the scheme, II Party/Management will sanction necessary amount for procurement of rice to the society. The society will collect requirements of rice from each workman and total requirement of rice will be informed to the Respondent/Management and the management will sanction necessary amount to Co-operative Society as loan and with that loan amount. Co-operative Society will directly procure rice without any intermediary. Thus, the workman will be able to get good quality of rice at a fair and reasonable price. After procurement rice will be directly supplied to workmen and the management will recover the amount from the monthly salary of workmen in ten easy instalments. The management will also collect simple interested fixed from time to time and there was no financial loss to the management, since the workmen will repay the said amount with interest. The rice loan scheme is implemented strictly and it was in practice for more than two decades, it has become service condition of the workmen and it has form part of the wages and it is a long and continuous custom, privilege enjoyed by the workmen. As usual the I Party Union by letter dated 12-2-98 made a request for sanctioning rice loan but instead of sanctioning rice loan as requested by Union, the II Party/Management put an unusual and unfair condition to the union and demanded the Union to give an undertaking to the effect that it was the last time loan being granted and they would not demand for future loan. Even after several requests in writing that the rice loan should be given without any condition, the management has refused to sanction the said loan without any condition. Therefore, the Union has raised an industrial dispute and the same was referred to this Tribunal for adjudication. Since the rice loan scheme was introduced for the welfare of the workmen taking into account the lack of basic and civil amenities at Kalpakkam, the II Party/Management is not justified in withdrawing the rice loan. The scheme is in vogue and practice continuously without any break for more than two decades. Therefore, before alterting or withdrawing the rice loan scheme, the II Party/Management ought to have given notice as contemplated under section 9 A of the Industrial Disputes Act, 1947. Since no such notice was issued before refusing to grant loan, the action of the management is violative of provisions under Section 9 A of the Industrial Disputes Act, 1947. Since the workmen were getting rice through loan facility, it is part of their wages as defined under section 2(rr) of the Industrial Disputes Act and therefore, rice loan scheme supplied at concessional rates cannot be withdrawn without any notice as contemplated under section 9A of the Industrial Disputes Act. Further, it is a custom and privilege enjoyed by the workmen which are covered under item 8 of the 4th Schedule to the Industrial Disputes Act. Therefore, withdrawal of such custom, privilege and usage that too to the detriment of workmen without any notice is illegal and arbitrary.

Therefore, the rice loan scheme which is a condition of service cannot be withdrawn in the manner not known to law. Further, it is only a loan and not an expenditure to the II Party/Management. There is no financial loss to the II Party/Management. On the other hand, the management is making profits out of it. Therefore, there is no difficulty for the management to sanction such an amount for rice loan. Therefore, withdrawing rice loan scheme is unfair and unreasonable. Therefore, the Petitioner Union prays that an award may be passed in their favour.

4. As against this, the Respondent in the Counter Statement alleged that no doubt it is true that Nuclear Power Corporation of India Ltd. has been formed by amending the provisions of Atomic Energy Act and all the employees who were in Nuclear Power Board were transferred to Nuclear Power Corporation of India Ltd. based on the package of offer of absorption given to them. With regard to extending of facility of rice loan, no mention is made in the offer of appointment in the service conditions of employees. They having accepted the service conditions, the employees cannot say that it is arbitrary and bad. Nuclear Power Corporation of India Ltd. have been providing the facilities namely housing facility with protected watery supply and nominal rent, very good sanitary arrangements and electrical fittings, free transport facility from township to place of work and back, free electricity up to certain units and beyond at a nominal rate, canteen subsidy, uniform for every year, towels for every two years, shoes for every two years, soaps for every month, undergarments for every six months, canvas shoes and other facilities. In addition to the above, Nuclear Power Corporation of India Ltd. have implemented lot of welfare schemes for its employees. The allegation that no facility of shops and markets to meet the day to day basic requirements of workmen are available in Kalpakkam is totally incorrect and false because the employees Co-operative Society is running its shopping centre and also milk booths where the commodities are sold at very competitive price and in addition, other shops are available in the township. When there was a scarcity of rice supply in Tamil Nadu, in order to mitigate the problems of Kalpakkam community, the then Chief Engineer had arranged for supply of rice from Nellore of Andhra Pradesh. The arrangement was followed on year to year basis on the proposal sent by unit concerned and on receipt of approval from Department of Atomic Energy. This has not been included as a welfare measure in any of the service conditions issued to employees. There is no scheme notified either by DAE or NPCIL for grant of loan for purchase of rice to employees of NPCIL. The grant of loan only to co-operative society for procurement of rice was reviewed and based on the availability of funds either the DAE or NPCIL was sanctioning the loan to co- operative society. Due to change in policy by the Ministry, funds were not allotted for grant of loan to co-operative society. As the rice loan was done only on year to year basis grant of loan of supply/purchase of rice is not at all in vogue in any of the power stations in NPCIL or any other units of DAE. The earlier practice of grant to loan on year to year basis is not a part of service condition. Since it was difficult for Nuclear Power Corporation of India Ltd. to mobilise funds exclusively for grant of rice loan and since such kind of facility was not extended to other units of Nuclear Power Corporation of India Ltd. taking into consideration, the request given by the Union, the Respondent/Management agreed to sanction loan to the Co-coperative Society as a one time measure for the year 1998 with a stipulation that no loan would be sanctioned in the years to come. Further, it is not correct to contend that the policy adopted with respect to IGCAR & Madras Atomic Power Station cannot be compared due to the reason that as far as the centralised policies are concerned they are similar in nature. It is the management to decide to grant loan to the Co-operative Society subject to availability of funds and this cannot be claimed as a matter of right by the I Party Union and further the employees who are working in NPCIL are being compensated for any raise in prices of essential commodities in the form of dearness allowance from time to time. At no point of time, the loan was sanctioned to the individual employees working in Nuclear Power Corporation of India Ltd. but the loan was sanctioned only to Co-operative Society. There is no permanent arrangement or scheme notified by the Nuclear Power Corporation of India Ltd. in this regard. It is only a extra temporary facility exclusively extended to Madras Atomic Power Station employees which was not extended to any other power stations working under the control of Nuclear Power Corporation of India Ltd. The contention of I Party that facility was withdrawn is totally incorrect in view of the fact that scheme is still in vogue by loan facility extended by Department of Atomic Energy employees Co-operative Society. Hence, the Respondent prays that the claim may be dismissed with costs.

5. In the above circumstances, the points to be decided in this case are as follows :-

(i) "Whether the action of the II Party/Management in withdrawing the practice of granting Rice Loan to their workmen is legal and justified?"

(ii) "To what relief the Petitioner Union is entitled?"

Point No. 1

6. In this case, on the side of the Petitoner Union, the President of the I Party/Union was examined as WW1 and on their side 24 documents wre marked as Ex. W1 to W 24. On the side of the II Party/Management one Sri T.V.George, Senior Manager (P & IR) Madras Atomic Power Station, Kalpakkam was examined as MW1 and 14 documents were marked as Ex.M1 to M14.

7. In this case, it is admitted that from the year 1978 i.e. nearly 25 years, the II Party/Management and before this the Department of Atomic Energy has sanctioned loan to the Co-operative Society for the supply of rice and recovery was effected with the interest from the employees who were working in the II Party/Management. According to the Petitioner, the said scheme has become condition of service of the workmen and it is for part of wages and it is also a long custom and privilege enjoing by the workmen and therefore, before altering or withdrawing the said rice loan scheme, the II Party/Management ought to have given notice as contemplated under Section 9A of Industrial Disputes Act, 1947 and since no such notice was issued before refusing to grant rice loan, the action of the Respondent/Management is illegal and violative of provisions of Section 9A of the Act.

8. But, on the side of the Respondent, it was contended that no doubt the rice loan was given to society, but it is only on year to year basis, on the proposal sent by the Unit concerned, but this has not been included as a welfare measure in any of the service conditions issued to employees. Further, there is no scheme notified either by the Department of Atomic Energy or Nuclear Power Corporation of India Ltd. for grant of loan for purchase of rice to employees of Nuclear Power Corporation of India Ltd. At no time, Nuclear Power Corporation of India Ltd. has sanctioned loan to individual employees and this grant of loan given to Co-operative Society for procurement of rice was reviewed every year and based on the availability of funds either Department of Atomic Energy or Nuclear Power Corporation of India Ltd. was sactioning the loan to Co-operative Society and therefore, the Petitioner Union cannot claim this as a matter of right or claim that before withdrawing the same, notice under Section 9A is to be given.

9. The learned counsel for the Respondent argued that in all the correspondence filed by the Petitioner, the loan was sanctioned only to Co-operative Society and not to individual employees, though the loan amount has been recovered from the employees salary on instalments. It was kept in a separate account and therefore, it cannot be said that the loan amount is part of their wages as defined under Section 2(rr) of the Industrial Disputes Act and supply of rice at concessional rates and further it is contended on behalf of the respondent that even withdrawing this loan to Co-operative Society will not affect the interest of the employees because even to-day the Co-operative Society is giving loan to the employees for purchase of essential commodities and therefore, there is no question of denial of facility which was given to them in the form of rice loan.

10. But, on the other hand, the learned counsel for the Petitioner argued that even in the letter dated 21-4-98 Ex. W1, the II Party/Management has addressed a letter to the I Party Union and not to the Co-operative Society. Further, this scheme was practiced by both the parties for more than two decades and it is a long continued usage and it becomes a custom and privilege enjoyed by the workmen which are covered under item 8 of IV Schedule to Industrial Disputes Act and therefore, withdrawal of such custom, privilege and usage that too to the detriment of the workmen is illegal and arbitrary. The learned counsel for the Petitioner relied on the decisions reported in—

1. 1972 2 SCC 383 TATA IRON & STEEL CO. LTD. Vs. WORKMEN AND OTHERS ;

2. 1976 1 SCC 63 MANAGEMENT OF INDIAN OIL CORPORATION LTD. Vs. ITS WORKMEN;

3. 1994 6 SCC 548 CALCUTTA ELECTRIC SUPPLY CORPORATION LTD. Vs. CALCUTTA ELECTRIC SUPPLY WORKERS' UNION & ORS;

4. 2001 1 LLN 468 TAMIL NADU ATOMIC POWER EMPLOYEES UNION Vs. NUCLEAR POWER CORPORATION (represented by its Station Director) Madras Atomic Power Station.

In the first case, M/s. Tata Iron & Steel Co. Ltd., which owns six collieries have decided to change the weekly rest days in the collieries. In a dispute raised by the workmen, the management contended that there was no change in conditions of service applicable to workmen in respect of item falling under 4th Schedule hence there need not be any notice under Section 9A of the Industrial Disputes Act. The, notice contemplated by Section 9A was necessary which admittedly was not given by the management that change in new schedule of rest days was not according to law. In that the Supreme Court has held that "*it appears to us that entries dealing with hours of work and rest intervals and leave with wages and holidays are wide enough to cover the case of illegal strikes and rest days. Indeed entry No.8 dealing with withdrawal of customary concession or privilege or change in usage is also wide enough to take within its fold the change of weekly holidays from Sunday to some other day of the week because it seems to us to be a plausible argument to urge that fixation of sundays as weekly rest days is founded on usage and/or is treated as a customary privilege and any change in such weekly holidays would fall within the expressions change in usage or customary privilege'.*" The second case is with regard to withdrawal of compensatory allowance given to workmen of Indian Oil Corporation Ltd. By virtue of Notification dated 3rd September 1957, the Central Govt. granted compensatory allowance according to certain rates to all Central Govt. employees posted throughout Assam. It has been given as an implied condition of service by the management of Indian Oil Corporation Ltd. Thereafter, there was another Notification by the Central Govt. dated 8th December, 1960 by which it was provided that employees in respect of compensatory allowance would be given the option to choose the house rent allowance or compensatory allowance but will not be entitled to draw both. Again, by

virtue of another Notification dated 9th August, 1965 the Central Govt. made it further clear that employees of Central Govt. would have to draw either compensatory allowance at the existing rate or the house rent allowance but not both. The Indian Oil Corporation management thought that the contents of the circular were binding on the company and therefore, they unilaterally without giving any notice to workers withdrew the concession of the compensatory allowance which had been granted to workers in September, 1959. When the dispute was raised, the Supreme Court has held that *"grant of compensatory allowance was an implied condition of service and that by withdrawing this allowance the employer sought to effect a change which adversely and materially affected the service conditions of the workmen and therefore, Section 9A of the Act was clearly applicable and non-compliance with the provisions of this section would undoubtedly raise a serious dispute between the parties so as to give jurisdiction to the Tribunal to give the Award. If the appellant management wanted to withdraw the Assam Compensatory Allowance, it should have given notice to workmen, negotiated the matter with them and arrived at some settlement instead of withdrawing the compensatory allowance overnight."* In the third case, Calcutta Electric Supply Corporation Ltd. has withdrawn the medical benefits given to employees which was provided as a part of service conditions, after the ESI Act came into force, in which the Supreme Court has held that *"withdrawal of medical benefits was prejudical to the workers and therefore, notice was necessary and since no such notice was given, the withdrawal of benefits was illegal."* In the fourth case, II Party/Management has changed the shift system after giving a notice under Section 9A of the Act. The Union raised the dispute but the Govt. has declined to refer the dispute to the Tribunal on the ground that already under Section 9A notice was issued and therefore, it is not a matter to refer the same to Tribunal for adjudication. But, the High Court has not accepted the contention and stated that *"the application of Section 9A in regard to change in service condition cannot be held to be decisive for declining a reference under Section 12(5) of the Industrial Disputes Act, unless the said dispute is resolved one way or the other, the change cannot be brought into force especially in a case like this, where it is claimed that the present shift pattern was prevailing right from the date of inception of power station of the 2nd Respondent."* Relying on all these decisions, the learned counsel for the Petitioner argued that grant of rice loan to Co-operative Society for purchase of rice was an implied condition of service and that by withdrawing this loan facility, the management sought to effect a change which adversely and materially affected the service conditions of the workmen and in such circumstances Section 9A of the Industrial Disputes Act, 1947 is clearly applicable and non-compliance of the provisions of this section by the II Party/ Management would undoubtedly raise a serious dispute between the parties so as to given jurisdiction to the Tribunal to give an Award and if the management wanted to withdraw the said scheme, it should have given notice to workmen and should have negotiated the matter with them and arrived at some settlement, instead of withdrawing the said scheme overnight.

11. But, on the other hand, the learned counsel for the Respondent argued that it cannot be considered as a condition of service and this facility was given as a temporary measure and this loan was not sanctioned to employees directly and it is only given to Co-operative Society. Further, even assuming that the employees are not able to get rice in good quality, they have to pay exorbitant rate in open market, employees are entitled for raise of Dearness Allowance in case, if the prices of essential commodities are raised more than the present rate and they are being compensated for any raise in prices of essential commodities in the form of Dearness Allowance from time to time and therefore, the grant of loan to Co-operative Society cannot be claimed as a matter of right by the employees. It is the further contention of the Respondent that when the employees were absorbed in the Nuclear Power Corporation of India Ltd., they have given offer of absorption but the alleged facility of rice loan was not mentioned in the offer of absorption in the service condition given to the employees and nowhere it is stated that rice loan facility will be extended to employees of Nuclear Power Corporation of India Ltd. Under such circumstances, the Petitioner Union cannot claim it as a matter of right and therefore, the claim is to be rejected.

12. But again, the counsel for the Petitioner argued that though it is not mentioned in the offer of absorption, it is stated in item serial No. 40(ii) under other terms and conditions of service, *'the employees will be governed by other terms and conditions which are now in existence but not enumerated hereto above'* and therefore, even though it is not mentioned in the offer of absorption specifically that rice loan scheme will be extended to the optees, the terms and conditions of service which were in existence prior to the absorption will be stated as continued. Under such circumstances, it cannot be said that it is not a condition of service. Further, this system was followed for more than 25 years, and a long usage and custom, the management is giving loan to the Co-operative Society and in turn, the employees who were members of the Society are benefited by this scheme and therefore, withdrawing the said scheme without giving notice is illegal.

13. I find much force in the contention of the learned counsel for the Petitioner because this scheme was in vogue and in practice for more than 25 years and having regard to the nature of the scheme and for the purpose for which this scheme was introduced and granted, I accept that it is one of the conditions of service. Therefore, I find there is no justification for withdrawing the same without giving notice under Section 9A of the Industrial Disputes Act, 1947. It is

clearly given under item 8 of Schedule IV to Industrial Disputes Act, 1947 and therefore, a notice under Section 9A is must and since no such notice was issued under Section 9A before withdrawal of this scheme of rice loan, I find the action of the II Party/Management is illegal and arbitrary. Therefore, I find this point against the Respondent/Management.

Point No. 2 :—

The next point to be decided in this case is to what relief the Petitioner/Workman is entitled?

14. In view of my foregoing findings, I find the action of the II Party/Management in withdrawing the rice loan to workmen is illegal and unjustified and the II Party/Management should not interfere with the said facility, till it is stopped or modified in accordance with law and after complying with the provisions contained under Section 9A of the Industrial Disputes Act, 1947.

15. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 13th February, 2004.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :

For the I Party/Workman : WW1 Sri R. Gurusamy

For the II Party/Management : MW1 Sri T. V. George

Documents Marked :—

For the I Party/Workman :

Ex. No.	Date	Description
W1	21-4-98	Letter from the II Party/Management to the Petitioner Union.
W2	12-02-98	Copy of Letter from the Petitioner Union to II Party/Management.
W3	22-04-98	Copy of letter from the Petitioner Union to II Party/Management regarding rice loan.
W4	25-04-98	Letter from II Party/Management to Petitioner Union Regarding grant of rice loan.
W5	29-04-98	Copy of letter from Petitioner Union to II party/Management.
W6	30-04-98	Letter from the Respondent/ Management to Petitioner Union.
W7	04-05-98	Copy of the letter from the Petitioner Union to Respondent.
W8	05-05-98	Letter from the Respondent/ Management to the Petitioner Union.
W9	11-05-98	Copy of the letter from the Petitioner Union to Regional Labour Commissioner (Central).
W10	08-06-98	Copy of reply submitted by Respondent before Assistant labour Commissioner (Central).
W11	29-01-99	Copy of failure report submitted by Assistant Labour Commissioner (Central).
W12	22-02-94	Xerox copy of the notice issued by Special Officer of Co-operative Stores.
W13	21-03-94	Xerox copy of the letter from the Respondent to Co-operative Society.
W14	28-03-94	Xerox copy of the notice issued by Co-operative Stores.
W15	10-03-97	Xerox copy of the fax message regarding grant of rice loan.
W16	22-06-98	Copy of letter from Petitioner Union to Assistant Labour Commissioner (Central).
W17	15-04-92	Xerox copy of the notice given by Co-operative Stores Regarding issue of loan rice.
W18	17-03-93	Xerox copy of the notice given by Co-operative Stores Regarding issue of loan rice.
W19	25-03-94	Xerox copy of the notice given by Co-operative Stores Regarding issue of loan rice.
W20	16-03-95	Xerox copy of the notice given by Co-operative Stores Regarding issue of loan rice.
W21	23-02-96	Xerox copy of the notice given by Co-operative Stores Regarding issue of loan rice.
W22	20-03-97	Xerox copy of the notice given by Co-operative Stores Regarding issue of loan rice.
W23	Dec. 94	Pay slip of Sri R. Guruswamy for the month of Dec. 1994 Issued by Respondent/Management.
W24	Jan. 1995	Pay slip of Sri R. Guruswamy for the month of Jan. 1995 issued by Respondent/Management.

For the II Party/Management :

Ex. No.	Date	Description
M1	26-05-94	Copy of memorandum issued by Respondent regarding Absorption of deputationists from DAE.

M2	04-09-87	Copy of office memo issued by Respondent regarding transfer of personnel to Nuclear Power Corporation of India.
M3	Nil	Copy of terms & conditions of service in NPCIL.
M4	24-12-97	Copy of memorandum issued by Respondent regarding Absorption of deputationists from DAE.
M5	16-04-91	Xerox copy of the letter issued by Respondent regarding grant of working capital to Co-op. stores.
M6	28-03-92	Xerox copy of the letter from Respondent to MAPP Employees Consumer Co-op. stores Ltd. regarding grant of Loan.
M7	11-03-93	Xerox copy of the letter from Respondent to MAPP Employees Consumer Co-op. stores Ltd. regarding grant of Loan.
M8	21-03-94	Xerox copy of the letter from Respondent to MAPP Employees Consumer Co-op. stores Ltd. regarding grant of Loan.
M9	19-03-96	Xerox copy of the letter from Respondent to MAPP Employee Consumer Co-op. stores Ltd regarding grant of Loan.
M10	02-04-97	Xerox copy of the letter from Respondent to MAPP Employees Consumer Co-op. stores Ltd. regarding grant of Loan.
M11	12-11-03	Authorisation letter issued by Station Director to Mr. T. V. George for giving evidence in this case.
M12	10-03-97	Xerox copy of the fax message regarding grant of rice loan.
M13	27-03-97	Xerox copy of the letter from Respondent at Mumbai Regarding of grant of capital loan to AEECCS for Procurement of rice.
M14	13-02-01	Xerox copy of the circular issued by Department of Atomic Energy Employees Co-op. Thrift & Credit Society Ltd.

नई दिल्ली, 23 मार्च, 2004

का० आ० 947.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन एअरलाइंस लि० के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में राष्ट्रीय औद्योगिक अधिकरण मुम्बई के पंचाट (संदर्भ संख्या Comp. No NTB. 6 of 2003 Arising out of Ref. No. NTB-1 of 1990) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-3-2004 को प्राप्त हुआ था।

[सं. एल.-22013/01/04-आई.आर. (सी-1)]

एस० एस० गुप्ता, अवर सचिव

New Delhi, the 23rd March, 2004

S.O. 947.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. Comp. No NTB. 6 of 2003 Arising out of Ref. No. NTB-1 of 1990) of the National Industrial Tribunal/Labour Court Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Indian Airlines and their workman, which was received by the Central Government on 19-03-2004.

[No. L-22013/01/04-IR (C-1)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE NATIONAL INDUSTRIAL TRIBUNAL AT MUMBAI

PRESENT: Shri Justice S.C. Pandey,
Presiding Officer

Complaint NTB-6 of 2003

(Arising out of Ref. NTB-1 of 1990)

PARTIES: Mr. G.K. Salve : Applicant

V/s.

Indian Airlines : Opp. Party

APPEARANCES:

For the Applicant : Mr. A.K. Menon, Adv.

For the Opp. Party : Mrs. Pooja Kulkarni, Adv.

State : Maharashtra

Mumbai dated the 20th day of February, 2004

AWARD

1. This is a complaint under the Industrial Disputes Act. The complainant is the employee of Indian Airlines Ltd. It is alleged in the complaint that he

alongwith One hundred and six more workers are working in the Catering section of Indian Airlines at Mumbai. The functions of the Catering section are given in paragraph 2 of the complaint. It is not necessary to reproduce them for the purpose of this application.

2. It is alleged that during the pendency of NTB-1 of 1990. The Indian Airlines has given a contract to a third party Taj Caterers and M/s. Ambassador Sky Chef by letter dt. 13/11/2002. The Caterers mentioned above were being given the complete handling of IAL and AASL flights. It is stated by the counsel for the Indian Airlines that the aforesaid two caterers were performing only in Bombay-Delhi flights. It is further stated that by the learned counsel that there is no intention on the part of Indian Airlines to retrench the complainant and the 106 persons who have filed this application.

3. It is undertaken on behalf of the Indian Airlines that even if complete handling is done by aforesaid two caterers the employment of complainant 106 persons shall not be terminated by way of retrenchment. They shall continue in the service of the Indian Airlines until and unless service of each individual is otherwise terminated in accordance with law or his individual service condition.

4. In view of this matter the learned counsel for the complainant agrees that in case this undertaking is implemented on behalf of Indian Airlines he shall not pursue this complaint. The complaint is disposed of as withdrawn subject to the right of the complainant if there be a breach of undertaking. Accordingly, this application is disposed.

S.C. PANDEY, Presiding Officer.

नई दिल्ली, 23 मार्च, 2004

का. आ. 948.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा. को.को.लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण II, धनबाद के पंचाट (संदर्भ संख्या 109/1996) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-3-2004 को प्राप्त हुआ था।

[सं. एल.—20012/279/95-आई.आर. (सी-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 23rd March, 2004

S.O. 948.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 109/1996) of the Central Government Industrial Tribunal/Labour Court II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 19-3-2004.

[No. L-20012/279/95-IR (C-1)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No. 2) AT DHANBAD

PRESENT:

Shri B. Biswas, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act., 1947

REFERENCE NO. 109 OF 1996

Parties: Employers in relation to the management of South Tisra colliery of M/s. B.C.C.L. and their workman.

APPEARANCES:

On behalf of the Workman	:	Mr. K. Chakravorty, Advocate
On behalf of the Employers	:	Mr. D.K. Verma, Advocate
State : Jharkhand	:	Industry : Coal

Dated, Dhanbad, the 27th February, 2004

AWARD

The Govt. of India, Ministry of Labour, in exercise of the power conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/279/95-IR(Coal-I), dated, the 17th September, 1996.

SCHEDULE

"Whether the demand of the Union that Sh. Ram Naresh Paswan and others as per list attached with the schedule of reference are eligible for regularisation from retrospective effect in Cat. I by the management is legal and justified ? If so, to what relief are these workman entitled ?"

2. The case of the concerned wokman according to Written Statement submitted by the sponsoring Union on their behalf in brief is as follows:—

The sponsoring Union submitted that the concerned workman have been working in the permanent nature of job at the Railway siding No. 9 of the management since long continuously under supervision and direction of their officials and also have put in for more than 240 days attendance in each calendar year. They submitted that the concerned workmen have been engaged in performing the job of coal breaking, shale picking, line cleaning, wagon levelling etc. and for taking up those jobs all implements are supplied by the management.

They alleged that the concerned workmen though performing all the jobs are direct control of the management their wages are being paid through intermediaries. They submitted that disbursement of wages to them through intermediaries is nothing but a camouflage and smoke sereen. They further alleged that to deprive the concerned workmen of their legitimate demand and wages management are not maintaining any statutory register. They submitted that as the concemed workmen perform their duties directly under control of the management they submitted prayer for their regularisation and demanded payment of wages of Cat. I as per NCWA, but they did not consider necessary to fulfil their minimum demand and for which finding no other alternative they raised an Industrial dispute before the ALC (C), Dhanbad for conciliation which ultimately resulted references to this Tribunal for adjudication.

Accordingly, they submitted their prayer to pass award directing the management to regularise all the concerned workmen in Cat. 1 with retrospective effect.

3. Management on the contrary after filing written statement-cum-rejoinder have denied all the claims and allegations which the sponsoring Union asserted in the written statement submitted on behalf of the concerned workmen. They submitted that some of the concerned workmen were engaged by the Transport Contractor M/s. Rawal Transcon (P) Ltd. registered office at D-11/14, Janakpur, New Delhi and they entered into alliance with large number of job seekers and formed the present group and have raised the industrial dispute with a demand for their regularisation though it has no existence of its bonafideness. They submitted that M/s. Rawal Transcon (P) Ltd is a company formed by ex-servicemen and they were awarded contract for transportation of coal from the coal depot of North Tisra, South Tisra and Jinagora collieries of Lodna Area to the Railway sidings with the prescribed rate of Transportation of coal per tone basis. They submitted that the aforesaid contractor firm deployed its own tippers/trucks, pay loaders and other machineries required for performing all jobs connected with and incidental to transportation of coal from the colliery depot to the Railway siding. For the purpose of operation of machines, the said contractor firm selected and recruited its own operators/drivers, Khalasis, cleaners, maintenance staff etc. and paid them the agreed wages, under their direct supervision and control. Similarly, the said contractor firm engaged its own workmen for carrying on the jobs incidental to and connected with transportation viz picking of shale and stone, in the process of loading and unloading and transportation for breaking lumpy coals, if and when available and for cleaning the vehicles and other jobs relating to the transportation.

They submitted that all the workmen deployed by the contractor were selected, recruited, paid and controlled by the contractor. It was the contractor who used to supervise their work through their own supervisory staff. Accordingly they had no concern with the firm of that contractor in the matter of selection, recruitment, supervision control over such workmen and for which no employer-employee relationship ever existed in between them. They further submitted that the Central Govt. has not issued any notification U/s 10 of the Contract Labour (Regulation and Abolition) Act prohibiting engagement of contractor labour on the jobs of transportation of coal from the colliery depots to the Railway siding or from the colliery depot to the consumers at New Delhi, Ludhiana etc. As there is no prohibition of engagement of contractor labour on such jobs, the demand of some of the contractor workers for their absorption by the management by way of regularisation of their services has no merit at all and for which their claim is liable to be rejected.

POINTS TO BE DECIDED

"Whether the demand of the Union that Sh. Ram Naresh Paswan and others as per list attached with the schedule of reference are eligible for regularisation from retrospective effect in Cat. I by the management is legal and justified ? If so, to what relief are these workman entitled ?"

FINDING WITH REASONS

5. It transpires from the record that the sponsoring Union in order to substantiate their claim have examined one of the concerned workman as WW-1. WW-1 deposed for self and also on behalf of other concerned workmen. Management also in support of their claim examined one witness as MW-1. WW-1 during his evidence disclosed that since 1992 he is working at siding No. 9 of South Tisra colliery along with other concerned workmen. He disclosed that as part of their duties they used to extract stones from

coal and also used to break coal into sizes for loading in the wagon. As part of their duties they also levelled the wagons being loaded with coal. He disclosed that the nature of job which they perform are permanent in nature and since 1992 they have attended duties for more than 240 days in each year. He disclosed that management is the owner of the said siding and for which they not only supply the implements for loading coal in the wagons but also supervise their work. He alleged that though they receive payment of wages directly from the management but the management never paid the wages like that of permanent workers of the company. He submitted that as they placed their demand for regularisation management threatened them from termination of work. This witness during his evidence relied on the attendance register-cum-wagesheet under signature of B. Roy, Personnel Officer marked as Ext. W-1 to W-2/4. He also during his evidence identified the overtime sheet duly signed by the same officer showing payment of overtime to them marked as Ext. W-3 and Ext. W-3/1. This witness however during his evidence has failed to identify the existence of any contractor under the name and style M/s. Rawal Transcon Pvt. Ltd.

On the contrary from the evidence of MW-1 Mr. B. roy it transpires that he was posted at South Tisra colliery as Personnel officer from 26-2-93 to 15-6-97. He categorically denied the fact thet the concerned workmen ever worked at South Tisra colliery. He not only denied his signatures appearing in the wagesheet and over time payment sheet marked as Ext. W-1 to W-2/4 and W-3 and W-3/1 which WW-1 relied on during his evidence but also categorically denied the fact about payment of wages to them under his direct supervision. He also denied the fact about his supervision of the work of the concerned workmen at the siding of the colliery as well as of the coal depot.

6 Considering the evidence of WW-1 I find no whisper about existence of any contractor under the name and style M/s. Rawal Transcon Pvt. Ltd. It is the specific claim that they work under the management at siding No. 9 of South Tisra colliery being directly engaged by the management. It is the specific claim that not only they worked under direct supervision of the management officials at the siding but also they received wages from the management directly. During cross-examination this witness has failed to produce a single scrap of paper relating to their appointment by the management. He also admitted that no identity card was provided to them by the management. He also admitted his ignorance if payment of wages to the workers of the management are made as per wage slip. Considering his evidence it transpires that his specific claim is to work directly under the management and not under the contractors. His further claim is the management is liable to regularise them as Cat. I workers as they put their attendance for more than 240 days in each year since their engagement by the management in the year 1992.

7. WW-1 during his evidence though categorically discarded the existence of any intermediaries and receipt of their wages through the said intermediaries in para-6 of the written statement has made out a different case relating to receipt of theri wages through intermediaries. It has been specifically asserted in the said para that management with ulterior motive to deprive the concerned workmen of their legal wages and other benefits have been disbursing their wages below the rate of NCWAs in the name of intermediaries. They alleged that such disbursement of wages in the name of intermediaries is nothing but a camouflage and smoke screen.

8. On the contrary a different picture comes in from the facts disclosed in the written statement submitted by the management. They in para 5 of the written statement disclosed that M/s. Rawal Transcon (P) Ltd. was awarded contract for transportation of coal from the coal depot of North Tisra, South Tisra and Jinagora collieries of Lodna area to the railway siding. The aforesaid contractor not only deployed its own tippers/trucks, Pay loaders and other machineries required for performing all jobs connected with and incidental to transportation of coal from the colliery depots to the railway siding but also recruited theri workmen for carrying on the jobs incidental to and connected with transportation viz. picking of shales and stone in the process of loading and unloading and transportation for breaking lumpy coals if further available. They in the written statement further disclosed that all the workmen deployed by the contractor were selected and recruited by the contractor. The said contractor not only used to supervise their work by their supervisory staff but also used to pay their wages. Accordingly no employer-employee relationship ever existed between them and the contractor workers. They further submitted that the Central Govt. never issued any notification U/s. 10 of the Contract Labour (Regulation and Abolition) Act prohibiting engagement of contractor labour on the jobs of transportation of coal from the colliery depots to the railway siding or from colliery depot to consumers. Therefore, according to the submission of the management the concerned workmen. were the workmen of the contractor M/s. Rawal Transcon (P) Ltd and for which as no employer-employee relationship grew up in between them and the concern workmen their claims at all are not tenable in the eye of law.

9. Druing cross-examination MW-1 disclosed that the management have their own permanent wagon loaders

and shale pickers in Cat. I for loading Coals in the wagons and also to seperate stones from the extracted coal. This witness frurther adimtted that different big sizes of coal extracted are converted into pieces by breaking for carrying the same from production centre to the siding. He also admitted that stone pieces are seperated from the coal at siding also.

MW-1 though during his evidence disclosed that he was not aware if the concerned workmen performed the duties of breaking coal, collecting stones from the coal dump, clearence of railway tracks and other works of similar nature did not make any whisper if transportation of coal from railway siding depot No. 9 South Tisra colliery used to be carried on by any contractor as per contract entered into between management and the concerned workmen. This witness during his evidence did not make any whisper about engagement of any contractor M/s Rawal Transcon (P) Ltd. at siding No. 9 of South Tisra colliery for the purpose of transportation of Coal through wagons particularly when in course of evidence it has been specifically asserted by WW-1 that they were engaged by the management at siding No. 9 of South Tisra colliery to perform the jobs the description of which has already been given above.

Considering the evidence and facts disclosed in the pleadings of both sides it transpires that when the sponsoring Union have claimed that the concerned workmen were engaged by management at siding No. 9 of South Tisra colliery management claimed that some workmen were engaged by the Transport contractor and thereafter they entered into alliance with large number of jobs seekers and formed the present group of 94 persons and for claiming employment have raised Industrial Dispute for regularisation of contractor's workers. During evidence WW-1 relied on attendance-cum-payment sheet to establish that they received wages from the management through their official under signature of the Personnel Officer Mr. B. Roy. The attendance-cum-payment sheet for the period from 16-7-93 to 31-7-93, 16-9-93 to 30-9-93, 1-11-93 to 15-11-93 1-9-93 to 15-9-93, 16-11-93, to 30-11-93, 1-3-94 to 15-3-94 and 11-2-94 to 15-2-94 were marked as Exts. W-1, Ext. W-2/2 Ext. W-2/3, Ext. W-2/4, Ext. W-3 and Ext. W-3/1. It is seen that the payment sheet marked as Ext. W-1, W-3 and W-3/1 were prepared in the letter Pad "Sainik Goods Carrier Pvt. Ltd., Labour payment sheet." while documents marked as Ext. W-2/1 to W-2/4 were prepared in the form "Ashirward Karmachari Senstha" Excepting the signature of Mr. B. B. Roy, Personnel officer of the management as claimed by WW-1 during his evidence there is no scope to ascertain if at all these payment sheets were prepared by the contractor for the work rendered by the concerned workmen at siding No. 9 of South Tisra colliery. MW-1 during his evidence categorically denied the signature appearing in the payment sheet as of his signature. There is no dispute to hold that MW-1 being personnel officer was posted at South Tisra colliery as Personnel Officer from 16-2-93 to 15-6-97 under the management. It is the specific claim of WW-1 that they used to receive payment directly from the official of the management. The payment sheet which have been marked exhibits shows that the same were not the payment-cum-attendance sheet of the management but of some private organisation. these payment sheets neither bears any offricial seal nor it bears any particulars at which place under the management the concerned workmen were engaged. I find no hesitation to say that the sponsoring Union in course of hearing have not been able to clarify the discrepancies appearing in the payment sheets which have been discussed above. Apart from is aspect it is the specific claim of the sponsoring Union that since 1992 the concerned workmen were working at siding No. 9 of South Tisra colliery continuously and they have put their attendance for more than 240 days in each year. The payment-cum-attendance sheet marked as Ext. W-1 to W-3/3 which the concerned workmen relied on in support of rendering services under the management covers the period from 1993 to 1994. The payment-cum-attencance sheet shows that during in the year 1993 they gave their attendance for 75 days while during 1994 they gave their attendance for 16 days. Therefore, burden of proof absolutely rests on the sponsoring Union to establish that since 1992 the concerned workmen put their attendance under the management for more than 240 days in each year. It is seen that the sponsoring Union in course of hearing have got ample scope to adduce evidence in support of their claim but I find no hesitation to say that they have lamentably failed to justify this claim.

10. It is not the case of the management that they entered into contract with any organisation under the name and style "Sainik Goods Carrier Pvt. Ltd." or "Ashirwad Karmachari Sanstha" for transportation of coal from the siding to Railway wagon. The specific claim of the management is that they engaged Transport Contractor M/s. Rawal Transcon(P) Ltd. for transportation of coal from coal depots from North Tisra, South Tisra and Jinagora collieries of lodna area to the railway sidings. They are abosolutely silent about engagement of any contractor viz. Sainik Goods Carrier Pvt. and Ashirwad Karmachari Sanstha for transportation of coal from coal depot. The payment-cum-attendence sheets marked as Ext. W-4 to W-4/2 as well as Ext. W-1 to W-3/3 were prepared by Bablu Roy (B.K. Roy) and his designation was disclosed as Supervisor, sindng No. 9. The name of this Bablu Roy (B. K. Roy) is appearing in Sl. 1 of the Payment-cum-attendence sheet as one of the workers who has

claimed for his regularisation. Therefore, it has been exposed clearly that this Bablu Roy (B. K. Roy) was not the official of the management but his status was out and out a status of the worker along with other workers who have raised industrial dispute for claiming their regularisation. No evidence is forthcoming that under specific direction of the management he prepared this attendence cum-payment sheet. Obviously there is sufficient reason to hold that it was the sponsoring Union under whose active connivance these attendance-cum-payment sheets were prepared. The sponsoring Union in para 9 of the Written statement categorically disclosed that to deprive the poor workmen of their legitimate demand of wages management did not maintain the statutory registers regarding the concerned workmen. The management made the perfect paper arrangement only to camouflage the real issue and to conceal the real fact. To justify this claim sponsoring Union relied on the attendance-cum-payment sheets marked as Ext. W-1 to W-4/2. These payment-cum-attendance sheets were prepared by Bablu Roy @ B. K. Roy who has been considered as workman and his name is appearing in Sl. No. 1 of the attendance-cum-payment sheets. It is not expected that this workman knowing fully well of their being exploited by the management would strengthen their hands by maintaining these attendance-cum-payment sheet disclosing his identity as supervisor.

11. Therefore, burden of proof absolutely shifts on the sponsoring Union to establish that the concerned workmen were actually the workmen of the management but the management with a view to exploiting them erected a sham contractor to show that they were the workmen of the said contractors though absolute administrative control was with them.

12. In course of hearing Ld. Advocate for the sponsoring Union referred to decisions reported in 1999(2) LLN 612 (SC), 1985 Supreme Court Cases (L&S) 975, 1996-(II) LLJ 435 (SC), S.C.L.J. Vol. 15 P. 112(SC), SCLJ Vol. (VI) P. 3867(SC), S.C.L.J. Vol. III SC-P. 1557, 1997 LLR 288(SC) 1995 II CRL 194, 1987 Lab I.C.P. 619 (SC), FLR-1990 (60) P-20 (SC) in support of their claim.

13. In the decision reported in 1999(2) LLN 612 in connection with Haryana State Electricity Board. Their Lordships of the Hon'ble Apex Court in para 13 observed to the effect that there is however, a total unaniminity of judicial pronouncement to the effect that in the event, the Contract Labour is employed in an establishment for seasonal workings, question of abolition would not arise but in the even of the same being of perennial in nature, that is to say, in the event of the engagement of labour force through intermediary which is otherwise in the ordinary course of events and involve continuity in the work, the legislature is candid enough to record its abolition since involvement of contractor may have its serious evil of labour exploitation and thus he ought to go out of scene bringing together the principal employer and the contractor labourers rendering the employment as direct and resultantly a direct employee." In arriving into this conclusion. Their Lordship referred to the decision of Air India Statutory Corporation Vs. United Labour Union (1993)(1) LLN 75.

14. Again the decision reported in 1985 Supreme Court cases (L & S) 975 in connection with Reserve Bank of India and others. Their Lordships of the Hon'ble Apex Court observed that striking out the names of workman from rolls amounts to retrenchment covered by Sec. 25F of the I.D. Act if it is found that the workman actually worked for a continuous period of more than 240 days in a year including Sundays and other paid holidays.

15. In the decision reported in 1996 II-LLJ P.435 (SC) in connection with the Employees State Insurance Corporation, Hyderabad vs. M/s. Rajakamal Transport & Anr. Their Lordships of the Hon'ble Apex Court observed to the effect "It is seen that the Insurance Court after elaborate consideration found as a fact, the appellants have the control over loading and unloading of the goods entrusted to the apellants. The appellants regular business is transportation of goods entrusted to as carrier. When the goods are brought to the warehouse of the appellants, necessarily the appellants have to get the goods loaded or unloaded through the Hamalis and they control the activities of loading and unloading. It is true as found by the Insurance Court that instead of appellants directly paying the charges from their pocket, they collect as a part of the consideration for transportation of the goods from the customers any pay the amount to the Hamalis. The test of payment of salary or wages in the facts of this case is not relevant consideration. What is important is that they work in connection with the work of the establishment. The loading and unloading of the work is done at their directions and control." While in the decision reported in S.C.L.J. Vol. 15 P-112 (SC) in connection with the case of Hussainbhai, Calicut Vs. The Alath Factory Thezhil, Ali, Union Kozhikode and others. Their Lordsjips observed "The true test may, with brevity, be indicated once again. Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers subsistence, skill and continued employment. If he for any reason chokes of the worker is virtually laid off. The presence of intermediate contractors with whom alone the workers have immediate or direct relationship ex contract

is of consequence when, on lifting the veil or looking at the conspectus of factors governing employment, discern the naked truth, though drapped in different perfect paper arrangement, that the real is the management not the intermediate contractor, Myriad devices, half hidden unfold after fold of legal forum depending on the degree of concealment needed, the type of industry, the local conditions and the like may be restored to when labour legislation casts welfare obligation on the real employer, based on Articles 38, 39, 42, 43 and 43-A of the Constitution. The Court must be astute to avoid the mischief and achieve the purpose of the land and not to misled by the maya of legal appearances.

If the livelihood of the workmen substantially depends on labour rendered to produce goods and services for the benefit and satisfaction of an enterprise, the absence of direct relationship or the presence of dubious intermediaries or the make believe trapping of detachment from the management cannot snap the real life bond. The story may vary but the noference defines ingenunity. The liability cannot be shaken off.

Again in the decision reported in LLJ Vol. II 1964 P= 633 (SC) in D.C. Dewan Mohidaan Sahib & Sons and another Vs. United Bidi Workers Union, Salem and another. Their Lordships of the Hon'ble Apex Court observed to the effect "On a review of entire evidence in the instant case the Industrial Tribunal found that the system of bidi manufacture through the so called intermediaries (styled as contractors) was a mere camouflage devised by the bidi manufacture. The Industrial Tribunal also found that the so called contractors were indigent persons and served no particular duties and discharged no special functions. Raw materials were furnised by the manufacturers to be manufactured into finished product by the workmen and the contractors had no other functions except to take the raw materials to the workman and gather the manufactured materials. It therefore hold that so called contractors were not independent contractors and were mere employees or were functioning as branch managers of various factories, their remuneration being dependent upon the work turned out. Hence it held that the bidi rollers were the employees of the bidi manufacturers and not of the socalled independent contractors. The writ Petition preferred by the employer to get the award quashed was however allowed but in the Writ appeal preferred by the concerned workmen the conclusions of the Industrial Tribunal were upheld."

Further in the decision reported in 1997 LLR 288 (SC) arising out of Air India Statutory Corporation Vs. United Labour Union and others. Their Lordships of Hon'ble Apex Court observed. "When the contract labour system is abolished by necessary implication, the principal employer is under obligation to absorb the contract labours. The linkage between the contractor and the employee stood snapped and direct relationship stood restored between the principal employer and the contract labour as its employees. Considered from perspective all the workmen in the respective services working on contract labour are required to be absorbed in the establishment of the Principal employer.

In the decision reported in 1995 11CLR 194(SC) in Parimal Ch. Laha and Ors. Vs. Life Insurance Corporation of India and Ors. Their Lordships of the Hon'ble Apex Court observed that the canteen workers are in fact the employees of the respondent corpration and they are entitled to minimum of the salary paid to class IV employees of the Corporation."

In Catering cleaners of South Eastern Railway Vs. Union of India reported in 1987 Lab I. C. 619. Their Lordships of the Hon'ble Apex Court observed that "On the facts and the report of the Parliamentary Committee of petitions on the question of employing catering cleaners. On contractor labour system that the work of cleaning catering establishment and Pantry car is necessary and incidental to the Industry or business of the Southern Railway and so requirement (a) of Sec. 10(2) is satisfied, that it is of perennial nature and so requirement (b) is satisfied, that the work is done through regular workmen is most railways in the country and so requirements (c) is satisfied and that the work requires the employment of sufficient number of whole time workmen and so requirement (d) is also satisfied. Thus all the relevant factors mentioned in Sec. 10 (2) appears to be satisfactorily accounted for. In addition is the factor of profitabolity of the catering establishment."

In Shankar Mukherjee & Other Vs. Union of India and others reported in FLR. 1990 (60) P. 20(SC). Their Lordishps of the Hon'ble Apex Court observed. It is surprising that more than forty years after the independent, the practice of employing labour through contractors by big companies including public sector companies is still being accepted as a normal feature of labour employment. There is no security of service to the workmen and their wages are far below than that of the regular workmen of the company. This Court in Standard Vacuum Refining Co. of India Ltd. v. its workmen (1) and catering clearns of Southern Railway (2) has disapproved the System of contract labour holding it to be 'archaie', 'Primitive' and of Painful nature. The system, which is nothing but an improved version of bonded labour, is sought to be abolished by the Act. The Act is an important piece of social legislation for the welfare of labourers and has to be liberally construed."

Learned Advocate for the workman in course of extending argument submitted that the alleged contractor was a camouflage one and it was the management who indisguise of the said camouflage contractor exploited the services of the workmen for years together. Learned Advocate submitted that the concerned workmen should be considered as regular workmen of the management and in support of this claim he relied on the decision reported in S.C.L.J. Vol. VI P. 3867. In the said decision arising of M/s. Basti Sugar Mills Ltd., and Ram Ujagar. Their Lordships observed "It was with a view to remove the difficulty in the way of workmen employed by contractors that the definition of employer has been extended by sub-clause (iv) of Sec. 2 (j)." The position thus is (a) that the respondents are workmen within the management of Sec. 2 (z) being persons employed in the industry to do manual work for reward and (b) they were employed by a contractor with whom the appellant company had contracted in the course of conducting the industry for the executions by the said contractor of the work of removal of press mud which is ordinarily a part of the Industry. It follows, therefore, from Sec. 2(z) read with sub-clause (iv) of Sec. 2 (i) of the Act that they are workmen of the appellant company and the appellant company is their employer.

On the contrary Learned Advocate for the management ruling out the claim of the sponsoring union submitted that the concerned workmen were neither engaged by them nor they worked at siding No. 9 under any contractors. MW-1 during his evidence disclosed that he never saw the workmen to work at that place. Relying on the evidence of MW-1 Learned Advocate for the management submitted that the allegation of camouflage finds no basis at all. Learned Advocate further relying on the decision of the Hon'ble Apex Court reported in 2001 Lab I.C. 3656 submitted that there is also no scope for direction absorption of the concerned workmen considering them as regular employees even if it is held that they were camouflage contract Labour. Their Lordships of the Hon'ble Apex Court observed in the decision referred to above that "Neither Section 10 of the Contract Labour (Regulation and Abolition) Act or any other provision in the Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuing a notification by appropriate Government under Sub-section (i) of Section 10 prohibiting employment of contract labour, in any process, operation or other works in any establishment." Consequently the principal employer cannot be required to order absorption of the contract labour working in the concerned establishment. Accordingly there Lordships of the Hon'ble Court overruled the judgement of Air India's Case. Their Lordship in this judgement further observed that on issuance of prohibition notification under Sec. 10 (1) of the Contract Labour (Regulation and Abolition) act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the wrokers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularise the services of the contract labour in the concerned establishment subject to the condition as may be specified by it for that purpose in the light of para-6 of the judgement. Hon'ble court in para-6 observed if the contract is found to be genuine and prohibition notification under section 10 (1) of the contract Labour (Regulation and Abolition) Act in respect of the concerned establishment has been issued by the appropriate Govt. prohibiting employment of contract labour in any process, operation or other work of any estiblishment and where in such process operation or other work of the establishment the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour, if otherwise found suitable and if necessary by relaxing the conditions is to maximum age appropriating taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualification.

Therefore, from the decision referred to above it is clear that when there is prohibitory order U/s. 10 (1) of the Contract Labour (Regulation and Abolition) Act and knowing fully aware of that order if the management engages contract labour thereby it will not confer any right to place claim for direct absorption of the contract labour in the organisation but if it is established that the contractor is a ruse/comouflage in that case the contract labours should be considered as employees of the management though in the matter of their absorption the guidelines given in para-6 should be followed.

Here in the instant case the specific claim of the sponsoring Union as per written statement is that though the concerned workmen engaged in performing the job of coal breaking, shale picking, lime cleaning, wagon levelling etc. continuously under direct supervision and control of the management they with ulterior motive to deprive them of their legal wages and other benefits used to disburse wages below the rate of N. C. W. As in the name of intermediaries and the said intermediary was nothing but a camouflage one.

It is curious to note that the sponsoring union in their written statement did not disclose the name of the intermediaries through whom the management used to pay wages to the concerned workmen far below the rates as per NCWAs. W-1 on the contrary disclosed that they were engaged by the management at siding No. 9 of South Tisra colliery for picking shales, levelling wagons etc. and since 1992 they performed their duties continuously at the said siding. This witness further disclosed that not only the officials of the management used to supervise their work they also used to supply materials for work and against that work they used to receive wages directly from the management. This witness during his evidence did not make any whisper about receipt of their wages through intermediaries though such claim was specifically agitated by the sponsoring Union in the Written statement. In course of hearing the representative of the concerned workmen failed to explain satisfactory about such ugly contradiction in relation to the mode of payment of wages to the workmen. I have already discussed about the documents marked as Ext. W-1 to W-3/1 which the concerned workmen relied on in support of their claims.

It is the specific claim of the management that for transportation of Coal from North Tisra/South Tisra/ Jeenagora collieries to Railway siding of Lodna area they issued work orders in favour of M/s. Rawal Transeon (P) Ltd. Ext. M-1 who had valid licence for carrying the said jobs Ext. M-2. The work order issued by the Management accordingly shows transportation of coal to Railway siding from different places. On the contrary from the evidence of WW-1 it transpires clearly that they were engaged at siding No. 9 of South Tisra colliery and had no connection with Rawal Transcon (P) Ltd. in the matter of transportation of coal at Railway siding from different places.

The attendance-cum-payment sheets etc. marked as Ext. W-1 to W-3/1 shows that the concerned workmen not only put their attendance in the attendance sheet maintained by Sainik Goods Carrier Pvt. Ltd. and Ashirwad Karmachari Sanasthan but also they received wages from these two organisations absolutely for a limited period. Considering the materials on record, I have failed to find out a single scrap of paper to show that these two organisations either were the labour contractors engaged by the management at siding No. 9 of South Tisra colliery or the management in disguise of these two organisations exploited services of the concerned workman WW-1 in course of his evidence did not utter a single word that they worked under Rawal Transcon (P) Ltd. any day. WW-1 during his evidence has failed to produce a single scrap of paper to show that they were appointed by the management and they received identity card to that effect. Not a single wage slip has been produced by the sponsoring union to show that the concerned workmen received their wages directly from the management. In this connection evidence of MW-2 may be taken into consideration to rebut the claim of WW-1 about receipt of wages directly from the management.

Accordingly, after careful consideration of all the facts and circumstances discussed above, I find reason to hold that the sponsoring Union have failed to establish miserably that the concerned workmen either directly worked under the management or they worked under the contractor who was a camouflage one. They have failed to establish the claim considering materials on record that the concerned workmen worked at siding No. 9 of South Tisra colliery for years together and during this period they put their attendance for more than 240 days in a year. In the circumstances, I hold that the concerned workmen are not entitled to get relief in view of their prayer.

In the result, the following Award is rendered :—

"The demand of the Union that Sh. Ram Naresh Paswan and others as per the list attached with the schedule of reference are eligible for regularisation from retrospective effect in Category-I by the management is not legal and justified. Consequently, the concerned workmen are not entitled to get any relief."

B. BISWAS, Presiding Officer

	Name	Husband's/Father's Name
1.	Bablu Roy (Sh. Ardhendu Kr. Roy)	Late Adhir Kr. Roy
2.	Deonandan Paswan	Sh. Dahu Paswan
3.	Ramnaresh Paswan	Sh. Sivan Paswan
4.	Munna P. Chowan (Shiv Pd. Nonia)	Sh. Viswanath Nonia
5.	Ashok Ram	Sh. Norwe Ram
6.	Kishna Wauri	Sh. Durpu Wauri
7.	Narayan Wauri	Sh. Manjura Wauri
8.	Naresh Sharma	Sh. Lakhan Thakur
9.	Jitendra Nisad	Sh. Jagdiah Nisad
10.	Keshav Weldar	Lte Mohan Weldar
11.	Naresh Paswan-I	
12.	Hira Paswan	Sh. Raghunadan Paswan
13.	Gorelal Mahto	Sh. Jagdish Mahto
14.	Ganauri Ram	Sh. Lakhan Das
15.	Rameshwar Mueyan	Sh. Yamuna Mueyan
16.	Yogendra Mueyan	Sh. Bengali Mueyan
17.	Gareeban Mueyan	Sh. Yamuna Mueyan
18.	Mantoo Mahto	Sh. Shyam Lal Mahto
19.	Mukhdeo Paswan	Sh. Ramchandra Paswan

	Name	Husband's/Father's Name
20.	Laljeet Paswan	Sh. Raghunath Paswan
21.	Amarnath Paswan	Sh. Narayan Paswan
22.	Mukhan Paswan	Late Kishun Paswan
23.	Naresh Paswan-II	Sh. Mishri Paswan
24.	Santosh Bouri	Sh. Bilas Bouri
25.	Jaggannath Wauri	Sh. Chltu Wauri
26.	Guja Wauri	Sh. Kashinath Wauri
27.	Amulyau Modi	Sh. Babu Lal Modi
28.	Nitesh Modi	Sh. Nand Lal Modi
29.	Rajesh Sharma	Sh. Mahadev Sharma
30.	Ajay Pd. Ram	Late Mahavir Ram
31.	Naresh Nisad	Sh. Aethwari Mallah
32.	Surendra Chauhan	Sh. Radheshyam Nonia
33.	Vinod Modak	Sh. Sahdeo Modak
34.	Jhavi Yadav	Sh. Muneshwar Yadav
35.	Manoj Rajak	Sh. Kiman Rajak
36.	Anil Mahato	Sh. Janki Mahato
37.	Wishu Wauri-I	Sh. Vijay Wauri
38.	Wishu Wauri-II (Vinod Wauri)	Sh. Rakhu Wauri
39.	Mohan Yadav	Sh. Lakshmi Yadav
40.	Ramvilas Paswan	Sh. Norwe Lal Paswan
41.	Subhash Kr. Verma	Sh. Sonu Pd. Verma
42.	Ganesh Rajwar	Late Raghu Rajwar
43.	Hiro Wauri	Late Kali Wauri
44.	Raghunandan Paswan	Sh. Darbari Dushad
45.	Raj Kr. Saw	Sh. Bundi Saw
46.	Devendra Panchal	Late Deo Ji
47.	Roto Wauri	Late Hari
48.	Sofal Wauri	Late Prabhash Wauri
49.	Dilip Mahto	Sh. Hari Mahto
50.	Sadhu Roy	Sh. Rakho Hari Roy
51.	Mathura Paswan	Sh. Baleshwar Paswan
52.	Mukhi Manjhyan	Sh. Lakhiram Manjhi
53.	Chotki Manjhyan	Sh. Mithur Manjhi
54.	Kamli Manjhyan	Sh. Shamil Manjhi
55.	Chamli Manjhyan	Sh. Majhiyan Manjhi
56.	Kajli Manjhyan	Sh. Nanda Manjhi
57.	Yasoda Manjhyan	Sh. Sikhod Hansda
58.	Rasmani Devi	Sh. Basudeo Turi
59.	Putula Devi	Sh. Jagdish Mallah
60.	Ramrati Mallahin	Sh. Baijnath Mallah
61.	Chanda Mallahin	Late Kailash Mallah
62.	Mina Veldadin	Sh. Shiv Pd. Nonia
63.	Mina Devi	Sh. Bhimal Choudhary
64.	Sakila Khatoon	Mohammad Jalil
65.	Saroon Khatoon	Samsuddin Ansari
66.	Munna Munia	Late Keso Munia
67.	Pano Devi	Lagan Mahato
68.	Niti Modiyan	Late Kartik Modi
69.	Aalta Waurin	Late Sofal Wauri
70.	Pramila Devi	Late Faguni Paswan
71.	Rajesh Paswan	Sh. Govima Dushad
72.	Uday Paswan	Sh. Baleshwar Paswan
73.	Aaduri Waurin	S. Manohar Wauri
74.	Kalipdo Modi	Sh. Durga Podo Modi
75.	Aandi Paswan	Sh. Bal Govind Paswan
76.	Rampratap Dhari	Sh. Permeshwar Dhari
77.	Ramvrix Dhari	Sh. Kailash Dhari
78.	Bindeshwar Paswan	Late Saryu Paswan
79.	Vijay Prasad	Sh. Vazir Chawhan
80.	Satyanarayan Paswan	Sh. Parmeshwar Paswan
81.	Manoj Paswan	Sh. Baleshwar Paswan
82.	Upkar Nishad	Sh. Vasant Nisad
83.	Krishna Paswan	Sh. Rajkumar Paswan
84.	Jitendra Paswan	Sh. Bisheshwar Paswan
85.	Maria Wauri	Late Kali Wauri
86.	Mahadeo Wauri	Late Satish Wauri
87.	Jitni Devi	Sh. Haru Karmkar
88.	Sukuram Manjhi	Karmu Manjhi
89.	Umesh Paswan	Sh. Kishun Paswan
90.	Binod Paswan	Sh. Prabhu Paswan
91.	Lalita Devi	
92.	Mina Rajwarni	Sh. Riju Rajwar
93.	Rajkumar Paswan	Sh. Parmeshwar Paswan
94.	Sikandar Paswan	Sh. Suresh Dushad.

L-20012/279/95—IR (C-1)

Government of India

MINISTRY OF LABOUR

New Delhi, the I 1th March, 1997

CORRIGENDUM

In this Ministry's order of even number dated 17th September, 1996, the names of the workmen, in the list appearing at Sr. Nos. mentioned below are corrected as below :—

Sr. No.	The name of the workmen given in the list attached to the order	Corrected name
6.	Krishna Wauri	Krishna Bouri
7.	Narayan Wauri	Narayan Bouri
15.	Rameshwar Mueyan	Rameshwar Bhuiya
16.	Yogendra Mueyan	Yogendra Bhuiya
17.	Gareeban Mueyan	Gareeban Bhuiya
25.	Jaggannath Wauri	Jagarnath Bouri
26.	Guja Wauri	Guja Bouri
37.	Wishu Wauri-I	Bishu Bouri No. I
38.	Wishu Wauri-II (vinod Wauri)	Bishu Bouri No. 2
43.	Hiro Wauri	Hiro Bouri
47.	Roto Wauri	Roto Bouri
48.	Safal Wauri	Sufal Bouri
69.	Aalta Waurin	Aulta Bouri
73.	Aaduri Waurin	Aaduri Bourin
85.	Maria Wauri	Maria Bouri
86.	Mahadeo Wauri	Mahadeo Bouri

(BRAJ MOHAN)
Desk Officer

नई दिल्ली, 23 मार्च, 2004

का०आ० 949.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा०को०को०लि० के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण II, धनबाद के पंचाट (संदर्भ संख्या 133/1995) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-03-2004 को प्राप्त हुआ था।

[सं० एल० 20012/397/94-आई.आर. (सी-I)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 23rd March, 2004

S.O. 949.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 133/95) of the Central Government Industrial Tribunal/Labour Court, II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 19-03-2004.

[No. L-20012/397/94-IR (C-1)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL NO. 2, DHANBAD

In the matter of a reference U/S. 10(1) (d) (2A) of the Industrial Disputes Act, 1947.

Reference No. 133 of 1995.

Parties : Employees in relation to the management of Bhowra Area of M/s. B.C.C. Ltd.

AND

THEIR WORKMEN.

Present : SHRI B. BISWAS, Presiding Officer

Appearances :

For the Employers : Shri D. K. Verma, Advocate

For the Workman : Shri S. N. Goswami, Advocate.

State : Jharkhand. Industry : Coal

Dated, the 24th February, 2004.

AWARD

By Order No. L-20012/397/94-I.R. (Coal-I) dated, the 19th September, 1995 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the matter for adjudication to this Tribunal with following schedule :

> "Whether the action of the management of Bhowra Area of M/s. BCCL in dismissing Smt. Hiramani Manjhian, Crusher Kamin from service is justified? If not, to what relief the concerned workman is entitled?"

2. The case of the concerned workman according to the written statement submitted by the sponsoring union on her behalf, in brief, is as follows :

The sponsoring union submitted that the concerned workman was a permanent employee of Bhowra (BP & PH) Power House appointed by erstwhile owner and after formation of the Organisation of the management of M/S. B.C.C. Ltd. under Bhowra Area No. XI (B.C.C.L.) Bhowra (North) U/G. Mines. They submitted that as the

management failed to provide accommodation the concerned workman used to attend her place of duty from Sindri where her husband was residing. On 15-6-94 the concerned workman failed to attend the place of her duty from Sindri as she fell sick on the ground of her suffering from tuberculosis. As she fell seriously ill neither she could inform the management about her absence nor she was able to report for his duty. Considering seriousness of her ailment she reported at Bhowra Hospital for her treatment, but as she was not recovered on receiving treatment of Bhowra Hospital, she remained under treatment of Dr. Manju Jha, Sindri from 18-6-94 to 27-1-95 and intimated this fact to the management. The sponsoring union submitted that after recovery of the ailment the concerned workman with her fitness certificate came to her place of duty and approached the management to allow her to join her duty but the management did not allow her to resume duty. On the contrary the management issued a Charge-sheet No. BCCL/BCP/XI/84/PH/CH/2 dated 17-8-94 which was handed over to her on 30-1-85. She submitted her reply and in the reply she assigned the reason of her absence on the ground of her illness, but the management without accepting her contention decided to hold domestic enquiry against her and accordingly appointed Enquiry Officer vide letter No. PS/85/(N)/CS/PH/6113 dated 24-4-95 under the signature of Dy. C.M.E., Bhowra (N) Colliery. The sponsoring union submitted that the alleged charge-sheet dated 17-8-84 for absenting from duty without any information or permission from the competent authority for more than ten days under clause 27 (16) of the Standing Orders applicable to the employees of Bhowra Power House issued by in-competent authority, who is neither the appointing authority nor disciplinary authority rather he is other than the competent authority to issue the alleged charge-sheet against the employees of Bhowra Power House. The Bhowra Power House is a captive plant. They alleged that the allegations levelled against the concerned employee was vague, indefinite, not specific and unwarranted, baseless and is not applicable under clause 27 (16) of the Certified Standing Orders. They submitted that the concerned workman beyond her control owing to her serious illness could not report to her duty on 15-6-84 and thereafter she was senctioned medical sick leave for a week and she was undergone treatment, but the management without accepting her contention conducted domestic enquiry against her and after completion of domestic enquiry the Enquiry Officer submitted a report holding her guilty to the charges. Relying on the enquiry report the management dismissed the concerned workman from her service illegally, arbitrarily and violating the principles of natural justice. Accordingly, the sponsoring union on behalf of the concerned workman submitted representation for her reinstatement, but as that was not considered they raised an industrial dispute before the A.L.C. (C) which ultimately resulted reference to this Tribunal for adjudication.

The sponsoring union, accordingly, submitted prayer to pass award directing the management to reinstate the concerned workman from the date of her dismissal with full back wages and other consequential relief.

3. The management, on the contrary, after filing written statement-cum-rejoinder have denied all the claims and allegations which the sponsoring union asserted in the written statement submitted on behalf of the concerned workman. They submitted that the concerned workman was working as crusher kamin under the management. They submitted that she started absenting from her duties with effect from 15-6-84 without permission or information. A charge-sheet dated 17-8-84 was issued to her alleging that she was absenting from her duty with effect from 15-6-84 wihtout any information or permission from the competent authority which amounted to misconduct under clause 27 (16) of the Standing Order applicable to the establishment. The concerned workman submitted reply dated 30-1-85 stating that she remained absent from her duty on account of her sickness. She admitted that she could not intimate her absence to the competent authority and prayed to allow her to resume her duty. As the reply given by the concerned workman was not satisfactory the management appointed Sri S. K. Sinha, Personnel Officer, as the Enquiry Officer and Sri D. Chatterjee, Engineer, as management's representative by memo dated 31-1-85 they submitted that the concerned workman during enquiry proceeding appeared and defended her case fully. They submitted that full opportunity was given to the concerned workman to defend her case. After completion of domestic enquiry the Enquiry Officer submitted her report holding the concerned workman guilty to the charges levelled against her. Considering the enquiry report and all material facts including enquiry proceedings the management decided to dismiss the concerned workman from her service and accordingly she was dismissed from her service by order dated 24-4-85.

In view of the facts and circumstances disclosed by the management they submitted their prayer to pass award rejecting the claim of the concerned workman.

Points to be decided

4. "Whether the action of the management of Bhowra Area of M/s. BCCL in dismissing Smt. Hiramani Manjhian, Crusher kamin from service is justified ? If not to what relief the concerned workman is entitled ?"

Finding with reasons

5. It transpires from the record that before taking up hearing of the instant case on merit hearing on preliminary point was taken up to observe whether the domestic enquiry held against the concerned workman by the Enquiry Officer was fair, proper and in accordance with the principle of natural justice. Vide order No. 48 dated 18-11-2003 the said issue was disposed of and it was decided by this Tribunal that the domestic enquiry

conducted by the Enquiry Officer against the concerned workman was fair, proper and in accordance with the principle of natural justice. In the circumstance at this stage there is no reason to re-open the same issue.

6. Here the point for consideration is whether the management has been able to substantiate the charge which was brought against the concerned workman and if the concerned workman is entitled to get any relief under Sec. 11-A of the Industrial Disputes Act, 1947.

Considering the facts disclosed in the pleadings of the parties and also evidence on record I have no dispute to hold that the concerned workman was a Crusher Kamin under the management at Bhowra Area No. XI of BCCL, Bhowra (North) UG Mines. It is the allegation of the management that the concerned workman started remaining herself absent from duty with effect from 15-6-84 without obtaining prior permssion or giving any intimation to the management. Accordingly, the management on 17-8-84 issued a charge-sheet to the concerned workman on that ground. The chargesheet during evidence of MW-1 was marked as Ext. M-1. The chargesheet Speaks as follows :

"It has been reported that you have been absenting from your duty since 15-6-84, without any information or permission from the competent authority, which amounts to a misconduct under clause 27 (16) "ABSENTING FROM DUTY WITHOUT ANY INFORMATION OR PERMISSION FROM THE COMPETENT AUTHORITY FOR MORE THAN TEN (10) DAYS" of the Standing Order applicable to the employees of Bhowra Power House.

You are therefore required to submit your explanation in writing within three (3) days of the receipt of this memo of Chargesheet as to "WHY DISCIPLINARY ACTION SHOULD NOT BE TAKEN AGAINST YOU."

It is seen that the concerned workman submitted her reply to charge-sheet which also during evidence was marked Ext. M-2. It is the specific claim of the concerned workman that as she was a tuberculosis patient and as she fell ill seriously on the ground of that ailment inspite of her utmost effort she could not join her duty after coming from the place of her residence at Sindri on 15-6-84. She intimated this fact to the management and thereafter for her treatment she went to Bhowra Hospital, but in the matter of her recovery as she did not receive fruitful result she left the hospital and remained under the treatment of Dr. Manju Jha, Sindri from 18-6-84 to 27-1-85 from the reply given by the concerned workman it transpires clearly that she could not intimate the reason of her absence to the competent authority as her husband was also lying seriously ill. In the reply she also informed that in connection with her ailment she reported at Bhowra Hospital, but as it was not possible on her part to take her treatment from Bhowra Hospital from Sindri, the place of her residence, she left the hospital and remained under the treatment of Lady Doctor from 18-6-84 till 30-1-85. The enquiry report during evidence of MW-1 was marked as Ext. M. 3 from the enquiry report it transpires that the concerned workman made a statement to the Enquiry Officer wherein she assigned all the reasons of her absence. The Enquiry Officer in his report also ventilated this fact relating to ailment of the concerned workman which she disclosed to him during hearing. During the course of enquiry the following points had been observed by the Enquiry Officer :

(a) That Smt. Hiramoni Manjhian was under treatment at Sindri and she has produced a medicial certificate in support of illness from a registered medical practitioner (State Dispensary) Sindri (marked Annexure 'A'). The genuinesess of the certificate may be relied upon. Of course, no prescription or allied papers have been submitted.

(b) It has been confirmed by the Medical Officer, Bhowra Hospsital that on 20-6-84 Smt. Hiramoni Manjhain reported to Bhowra Hospital and attended the hospital for a week only. (Annexure 'B').

(c) She has admitted that no information was given to the management of Bhowra Power House about her long illness. She was not granted leave nor she was on the authorised sick roll."

From his observation it transpires clearly that the concerned workman submitted a medical certificate in relation to her ailment and the Enquiry Officer did not raise any dispute relating to genuineness of the certificate issued by the Doctor. The Enquiry Officer also was confirmed from the Medical Officer, Bhowra Hospital that the concerned workman reported to Bhowra Hospital about her ailment and attended the said hospital for a week. Therefore, it is seen that the concerned workman was actually lying ill from 15-6-94 till 30-1-95 and the Enquiry Officer also satisfied with the fact relating to ailment of the concerned workman during the period in question. It is really curious to note when the Enquiry Officer was satisfied about the reason of the absence of the concerned workman he came to the conclusion that the charge levelled against the concerned workman for his unauthorised absence was established beyond reasonable doubt. It is seen that after submission of the report the matter was placed before the Disciplinary Authority and the Personnel Manager on the reverse page of the enquiry report made observation to the effect that the period of absence of the concerned workman will be treated as "leave without pay". Inspite of making such obsveration by the Personnel Manager another note was given with the comments "this is a case of dismissal ".

Below that note there is another note "dismissal approved". It is the bounden duty of the Disciplinary Authority to assign reason that without sufficient explanation how a workman shall liable to be dismissed from service. When it is seen from the report of the Personnel Manager that the absence of the concerned workman may be treated as "leave without pay' the further note came to the effect that it is a case of dismissal. The two opinions appear to be dramatically opposite. But inspite of holding reverse view there is no explanation to the effect how the concerned workman shall be dismissed from her service particularly when it has been established from the report of the Enquiry Officer that the concerned workman actually was lying ill as of tuberculosis patient. It is seen that the management without holding a compassionate view inspite of knowing the fact that she was a tuberculosis patient did not waste a minute further to draw decision to dismiss her from service. It transpires that she was a permanent workman of the management and started working there since the time of erstwhile owner of the said Power House.

7. It is fact that the concerned workman did not intimate the fact of her absence well ahead. If this aspect is taken into consideration in that case there is scope to say that she remained on unauthorised leave but simultaneously it is to be taken into consideration whether the concerned workman was physically and mentally capable enough to intimate this fact personally to the management. However, it is clear that immediately after lying seriously ill she went to Bhowra Hospital for her treatment. That Hospital belongs to the control of the management. The report of the Enquiry Officer shows that the concerned workman was under treatment there with effect from 20-6-94 for a week. The concerned workman went on leave with effect from 15-6-94. It was the foremost duty of the Medical Officer of Bhowra Hospital to report this fact to the management immediately after the concerned workman attended that hospital for her treatment. It transpires that the Medical Officer of Bhowra Hospital did not consider necessary to inform this fact to the management and it should be considered as a serious latches on the part of the Medical Officer. However, as soon as the concerned workman reported for her treatment at Bhowra Hospital there is no scope to say that she remained on unauthorised leave. On the contrary, it has been established that she decided to take her treatment from the hospital of the management under their care. Considering the statement of the concerned workman it is clear that from Sindri she used to attend her duty at Bhowra every day as because the maangement did not provide her any accommodation at Bhowra. She disclosed that with such serious illness as it was not possible for her to attend Bhowra Hospital regularly from Sindri she decided to take her treatment of Dr. Manju Jha at Sindri and remained under her treatment till 30-1-95. The Enquiry Officer relied on the said medical certificate which was produced by the concerned workman in course of hearing Proceeding duly issued by Dr. Manju Jha. Therefore, it has been proved beyond all shadow of doubt that the concerned workman was actually lying ill being a tuberculosis patient. Knowing fully well all this fact I have failed to understand how the concerned workman was dismissed from her service.

8. It is the specific allegation of the management that the concerned workman went on unauthorised leave from 15-6-94 for more than ten days. It is seen that on 20-6-94 the concerned workman reported at Bhowra Hospital for her treatment and for one week she remained under treatment there. Therefore, there is no scope to say in view of my observation made above that the concerned workman from 15-6-94 remained on unauthorised leave for more than ten days.

In view of my discussion above I hold that the management have failed to establish the charge brought against the concerned workman. It is seen that the order of dismissal was signed by the Dy. C.M.E. The representative of the concerned workman submitted categorically that the Dy. C.M.E. had no authority to dismiss the concerned workman from her service as he was not the appointing authority. The learned Advocate for the management submitted that power was delegated to Dy. C.M.E. though they have failed to submit any such order to that effect. The learned Advocate for the concerned workman referred a decision reported in F.L.R. 1992 page 659 and submitted that even if there was a delegation of power the Dy. C.M.E. had no authority to dismiss the concerned workman from her service. In the said decision their Lordship of Hon'ble High Court, Patna observed that by virtue of delegated power the officer who is empowered with that power is debarred from taking any disciplinary action against the concerned workman. If this aspect is taken into consideration also in relation to a decision reported in 1989 Lab. I.C. 1532 then in that case there is sufficient scope to say that the Dy. C.M.E. exceeding his power dismissed the concerned workman from her service. I fully conceed with the observation of the Personnel Manager which was given on the reverse side of the enquiry report. Under that facts and circumstances it would have been deserving to allow the concerned workman to resume her duty treating the period of absence as 'leave without pay'. Therefore, considering all the facts and circumstances it is clear that the management not only have failed to establish the fact but also simultaneously have failed to explain the reason of dismissal of the concerned workman which is to be a mandatory one. Moreover, it is seen that the management in course of hearing have failed to show that the Dy. C.M.E. was competent enough to pass the order of dismissal against the concerned workman.

9. In view of all the facts and circumstances discussed above I hold that the management illegally, arbitrarily and violating the principle of natural justice dismissed the concerned workman from her service.

Accordingly, the management is liable to reinstate her in service from the date of her dismissal i.e. 24-4-85 with 50% of back wages and other consequential benefits.

10. In the result, the following award is rendered—

The action of the management of Bhowra Area of M/s. B.C.C. Ltd. in dismissing Smt. Hiramoni Manjhian, Crusher Kamin, from service is not justified. The management is directed to reinstate the concerned workman in her service with effect from 24-4-95 with 50% of back wages within 30 (thirty) days from the date of publication of the award in the Gazette of India.

B. BISWAS, Presiding Officer

नई दिल्ली, 23 मार्च, 2004

का. आ. 950.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार टिस्को के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण II, धनबाद के पंचाट (संदर्भ संख्या 286/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-3-2004 को प्राप्त हुआ था।

[सं. एल-20012/184/99-आई.आर.(सी-I)]

एस० एस० गुप्ता, अवर सचिव

New Delhi, the 23rd March, 2004

S.O. 950.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 286/99) of the Central Government Industrial Tribunal/Labour Court, II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of TISCO Ltd. and their workman, which was received by the Central Government on 19-03-2004.

[No. L-20012/184/99-IR (C-1)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL NO. 2, DHANBAD

PRESENT :

SHRI B. BISWAS, Presiding Officer

In the matter of an Industrial Disputes under Section 10(1)(d) of the I.D. Act., 1947.

Reference No. 286 of 1999

PARTIES : Employers in relation to the management of Tisco. Ltd. and their workman.

APPEARANCES :

On behalf of the workman : Mr. N.G. Arun, Authorised Representative

On behalf of the employers : Mr. D. K. Verma Advocate.

State : Jharkhand. Industry : Coal

Dated, Dhanbad the 24th February, 2004.

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I. D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/184/99-IR (C-I), dated the 3rd August 1999.

SCHEDULE

"Whether the demand of the Union for employment of Md. Yusuf, the dependant son of late Md. Yunus from the management of Jamadoba Colliery of M/s. Tisco. is justified? If so, to what relief Md. Yusuf is entitled?"

2. The case of the concerned workman according to Written Statement submitted by the sponsoring Union on his behalf, in brief, is as follows :

It has been submitted by the sponsoring Union that late Md. Yunus was a permanent employee of Jamadoba Colliery under M/s. Tisco. Ltd and had been working as Line Mazdoor since 1-11-76. They submitted that the said workman i.e. Md. Yunus have been suffering from "Liver Cancer" and after prolonged treatment at Tata Main Hospital he expired on 14-8-89 at the same Hospital. After the death of Md. Yunus his wife Smt. Meherrunnia applied for employment but her case was not considered because the management was not in favour of employment to any family. They submitted during conciliation hearing before the ALC (C) over that issue which the management in their rejoinder disclosed as follows :—

"It was pointed out by the management representative that wife is not considered as dependant for the purpose of employment and as such the demand of the union cannot be acceded to. The Union was satisfied with the contention of the management that the employment of female worker is very limited in underground mines because of statutory restrictions and therefore, the said file was closed on the aforementioned date".

They disclosed that thereafter on the advice of the management Md. Yusuf, dependant son of late Md. Yunus requested the management to offer his employment on compassionate ground but that too was not considered by the management. They alleged that inspite of standing policy to offer employment to the dependant of the deceased who died in Cancer or incurable disease in the instant case the management did not follow the same arbitrarily. They further submitted that the management previously on different occasion offered employment to the dependant of many workers who neither completed 15 years of service with the company nor died of any ailment

as per list maintained by the management. They further submitted that due to this discriminatory policy of the management whole family of the deceased employee are passing their days in the midst of starvation. They disclosed that Md. Yusuf , dependent son of Md. Yunus has got adequate knowledge of fabrication, welding and other similar nature of job and accordingly he could be exclusively utilised by the management if employment in view of his prayer was provided to him. They submitted that as the management turned down the prayer of the son of the deceased worker they raised an industrial dispute before the ALC (C), Dhanbad for conciliation which ultimately resulted reference to this Tribunal for adjudication.

3. Management on the contrary after filing Written statement-cum-rejoinder have denied all the claims and allegation which the sponsoring Union asserted in the Written statement submitted on behalf of the concerned workman. They submitted that Md. Yunus i.e. the deceased worker was appointed on 1-11-76 at Jamadoba Colliery and expired on 14-11-89 at Tata Main Hospital, Jamshedpur due to "Liver failure" after putting about 13 years of service. They submitted that as per the procedure of the Company name of one dependent is enrolled in the employees dependent register on the application filed by an employee after completion of 15 years of service. As the aforesaid workman did not complete 15 years of service under the company he did not get the name of any of his dependent enrolled for his future employment. They further submitted that the provision of NCWA has no application so far as employment of dependents are concerned to the establishment of the company. The company follows its own procedure of employment according to which each and every workman gets opportunities to get his dependent enrolled in the Employees Dependent Register and the dependent is provided employment according to seniority in service against existing vacancies at a particular time. It has been submitted by them that due to non-availability of vacancy they are facing serious difficulties in providing employment to the dependents due to introduction of modern technology in the mining operation for winning coal from the mines. Apart from that fact they are also facing surplus man power and for which they have been compelled to introduce voluntary retirement scheme for reducing man power. They submitted that when such position is prevailing question of offering fresh employment did not arise. In view of the facts and circumstances stated above management submitted their prayer to pass award rejecting the claim of the concerned workman.

4. POINTS TO BE DECIDED

"Whether the demand of the union for employment of Md. Yusuf, the dependent son of late Md. Yunus from the management of Jamadoba Colliery of M/s. TISCO. is justified? If so, to what relief Md. Yusuf is entitled?"

5. FINDING WITH REASONS

It transpires from the record that the sponsoring Union have examined two witnesses to substantiate their claim. Management on the contrary examined one witness as MW-1 in support of their claim. Of the two witnesses examined by the sponsoring Union WW-1 is the widow of the deceased workman i.e. Md. Yunus and WW-2 is the Regional Secretary of Tata Group of Collieries of R.C.M.S. Considering the evidence of both sides and also considering the facts disclosed in the pleading of both sides there is no dispute to hold that Md. Yunus the deceased workman got his employment as Line Mazdoor at Jamadoba colliery on 1-11-76 under the management. It is also admitted fact that said Md. Yunus died at Tata Main Hospital, Jamshedpur on 14-11-89 i.e. after putting 13 years of service. After the death of Md. Yunus his widow Meherrunisa i.e. WW-1 submitted an application for her employment. Management regretted to provide employment to her, considering their policy decision not to provide employment to any female. Over that decision the sponsoring Union raised an industrial dispute before the ALC(C), Dhanbad for conciliation. It transpires that the management took the same view of not providing employment to any female workman and accordingly they flatly denied to provide employment to the widow of the deceased taking the same principle. The conciliation matter in view of the submission of the management was ended and no reference was initiated by the Ministry for adjudication of the dispute in question. This fact is not the subject matter of the instant reference case. However, instant reference case is in relation to giving employment to Md. Yusuf son of the deceased workman by the management. Now let us consider if the claim of the sponsoring Union stands on cogent footing or not and if so whether Md. Yusuf is entitled to get any employment on compassionate ground or not. It transpires from the evidence of WW-2 that six years after the death of Md. Yusuf his widow Meherrunisa submitted another application for employment of the son of her deceased husband when her prayer for employment was not considered by the management. It is the contention of the sponsoring Union that there is a policy of the management to provide employment to the dependent of the deceased worker if that worker expires on Cancer or any other incurable disease. WW-2 submitted during his evidence that Doctors actually could not find out the exact disease from which Md. Yunus i.e. the deceased worker was suffering from. Sometimes the Doctor opined, that he was suffering from Collitis and sometimes they opined that he was suffering from ailment in Gall Bladder along with some Liver disease. Again sometimes they opined that he was suffering from Tumour in the abdomen. However, when the doctors were busy in finding out actual ailment which

the concerned workman was suffering from, he died. This witness further disclosed that for his treatment the deceased worker was first admitted at Tata Hospital Jamadoba and thereafter he was transferred to Tata Main Hospital Jamshedpur. He further disclosed that in the midst of his treatment as indoor patient at Tata Main Hospital Jamshedpur the said workman died. This witness disclosed that during conciliation proceeding as the management relying on the policy decision regretted to provide employment to the widow of the deceased worker the said conciliation proceeding was stopped. Thereafter the widow of the deceased submitted representation for providing employment to the son of the deceased workman but that too was regretted by the management, and for which the sponsoring union again raised industrial dispute before the ALC(C), Dhanbad for conciliation. At that time management expressed their inability to provide employment to the son of the deceased as the claim did not cover under employment policy followed by them. This witness disclosed that inspite of existence of employment procedure the management sometimes in case of need provided employment to the dependent and in support of that claim this witness referred some cases during his evidence. MW-1 on the contrary in course of his evidence disclosed that management of TISCO maintains their own employment procedure to give employment to the deceased worker. According to that procedure the petitioner who is dependent son of the deceased is not entitled to get employment on compassionate ground. It is the contention of the management that as per employment procedure an employee who has completed 15 years of service, is allowed to enroll the name of one of his dependent in the dependent's register of employment and thereafter employment to that dependent provided subject to availability of vacancy as well as per seniority list. In the instant case the concerned workman got his employment in the year 1976 and he died in the year 1989, i.e. after completion of 13 years of service, the said workman i.e. Md. Yunus died and accordingly as per employment policy maintained by the management the said workman did not get any scope to record the name of one of his dependent in the employees dependent register for future employment. MW-1 during his evidence relied on the service card of Md. Yunus as Ext. M-1 which shows the span of service enjoyed by the said workman. It is the case of the management that as the claim for employment of the widow of the deceased was regretted, claim for employment of his son was initiated by Shri S. K. Mahato, Secretary, RCMS (WW-2) Jamadoba branch but that too was regretted. In support of this claim management relied on a letter marked as Ext. M-3. Management also relied on the minutes of the Union management meeting held with the Executive Director (RM) on 10-2-94 at Jamadoba (Ext. M-4) to show that in the said meeting a resolution was taken about employment of female workers in the colliery. In item No. 6 of the Minutes of meeting it was observed clearly :—

> "Employment of female as dependent on permanent basis against existing rules which cover listed diseases.
>
> After hearing the request of the union, the relevant employment procedure in vogue was explained by DM (P&W). It was informed that wife is not included in the definition of dependents for the purpose of employment on the strength of service. It was also clarified that scope for employment of female workers in the mining industry was limited.
>
> ED (RM) advised DM (P&W) and Sri G.N. Singh, Secy. RCMS Dhanbad to jointly examine the scope of providing gainful employment to female workers on surface. He advised that individual cases could be referred to him and the same would be looked into on merit and availability of gainful employment on surface in each such case."

Therefore, sponsoring Union before raising industrial dipute for employment of the widow of the deceased was very much aware that wife is not included in the definition of dependents for the purpose of employment on the strength of service. No satisfactory explanation on the part of the sponsoring Union is forthcoming why inspite of getting knowledge of the existing policy of the management raised industrial dispute for employment of the widow of the deceased. It is the contention of the management that provision for employment as per clause 10-4-2 of 10-4-3 of the NCWAs are not applicable under their management as they maintain their own existing employment policy which was duly endorsed by the RCMS Union. In support of this claim the management relied on the letter written by S.Dasgupta, Joint Genl. Secretary addressed to the G.M. (Collieries) of the management which during evidence of MW-1 was marked as Ext.M-5.

6. The question is whether on compassionate ground the present petitioner i.e. Md. Yusuf is entitled to get any employment. It is the contention of the sponsoring union that Md. Yunus i.e. the deceased worker died of "Liver Cancer". In support of that claim the sponsoring union relied on medical papers marked as Ext. W-1 to W-1/6, W-1/8 to W-1/12. I have carefully considered all these medical papers but from these medical papers I do not find any whisper if the deceased workman died as a result of "Liver Cancer". The sponsoring Union during evidence relied on document marked as Ext. W-3/1. From this document it transpires that Md. Yunus died of Viral Hepatitis and not of liver cancer. Therefore, it is clear that the cause of death of the said workman was not of "Liver Cancer" but of viral Hepatitis. MW-1 during his evidence disclosed that there is procedure for giving employment to the dependent of the deceased under the management

if the said workman dies or is declared medically disabled and unfit due to suffering from T.B., Cancer, Nystagmus and pneomoconosis. He disclosed that excepting those diseases no such privilege for employment is given to any dependent of the worker after completion of his 5 years of service. This witness further disclosed that long years back the management in some cases provided employment to the dependent of the deceased or to outsiders in superseding the procedure for employment, but that procedure has totally been stopped. Therefore, considering submission of the management it is clear that as they follow their own employment procedure they do not follow the procedure as laid down in clause 10-4-02 and 10-4-03 of NCWAs in the matter of providing employment to the deceased worker. They disclosed that as the claim of the sponsoring union for providing employment of Md. Yusuf son of deceased worker did not come within the purview of their employment policy they regretted such prayer. Apart from this fact, the management further submitted that after six years of the death of that workman the union has comeforward with this claim without any justified ground. It is fact that 6 years after the death of Md. Yunus the sponsoring union has raised the industrial dispute over employment of his son. WW-1 during his evidence explained the reason for such delay but I consider it absolutely insufficient. No satisfactory explanation on the part of the sponsoring Union is forthcoming why they did not initiate their claim for employment of MD. Yusuf immediately after the death of this father i.e. Md. Yunus. Knowing fully well of the fact that due to policy decision management do not provide employment to any female worker. It is seen that knowing fully well of this fact the sponsoring union initiated employment for the widow of the deceased. If the conduct of the sponsoring union is taken into consideration there is reason to believe that the son of the deceased worker, as was miner at the relevant time of his death initiation was made by them for employment of his widow.

7. Employment on compassionate ground is considered to save the family of the bereaved worker from financial stringency and also to save from starvation. The need accordingly is considered imminent in nature. By lapse of time such imminency wipes out. No cogent evidence is forthcoming on the part of the sponsoring Union that as a result of the death of the deceased worker his family was handicapaed financially and they started passing their days in the midst of starvation. It cannot be taken into consideration that as a matter of right management or employer is liable to provide employment in case of death of the workers because it affects not only the principle of natural justice but also affects the Constitutional right of employment by others. Such employment is only considered if extreme exigency is proved. Mere filing of application for employment after a lapse of 6 years does not justify the proof of exigency until and unless it is so established by the claimant. The representative of the concerned workman in course of hearing referred to a decision reported in AIR 2000 Supreme Court 1596. In the said decision Their Lordships of the Hon'ble Apex Court observed"

> "Benefit of employment on compassionate ground cannot be nagatived on the ground of introduction of scheme assuring regular monthly income to disabled empolyee or dependants of deceased employee."

Their Lordships further observed:—

> "The sudden jerk in the family by reason of the death of the bread earner can only be absorbed by some lump sum amount being made available to the family. This is rather unfortunate but this is a reality. The feeling of security drops to zero on the death of the bread earner and insecurity thereafter regns and it is at that juncture if some lump sum amount is made available with a compassionate appointment, the grieve stricken family may find some solace to the mental agony and manage its affairs in the normal course of events. It is not that monetary benefit would be the replacement of the bread earner but that would undoubtly bring some solace to the situation. The introduction of the family benefit seheme vide tripartite agreement, which enabled the employees family to receive regular monthly payment equivalent to the basic pay together with dearness allowance last drawn by the deceased or disabled employee till the normal date of superannuation of the employee in question in lieu of depositing the lump sum provident fund and gratuity amount with the employer cannot be in any way equated with the benefit of compassionate appointments. The introduction of family benefit scheme cannot be a ground to refuse benefit of compassionate appointment. "

In the instant case claim of employment is coming after a lapse of 6 years after the death of the deceased worker. Therefore, this demand for employment cannot be taken at par with the view of the Hon'ble Apex Court stated above. The sponsoring Union had the scope to place the demand for employment of the son of the deceased worker immediately after his death but they did not consider necessary to do so for the reasons best known to them. Accordingly, at this belated stage I do not find any cogent ground to uphold their contention in the matter of employment of the son of the deceased worker and for which he is not entitled to get any relief. In the result, the following Award is rendered:—

> "The demand of the Union for employment of Md. Yusuf the dependant son of late Md. Yunus from

the management of Jamadoba colliery of M/s. Tisco is not justified. Consequently, the concerned workman is not entitled to get any relief."

B. BISWAS, Presiding Officer

नई दिल्ली, 23 मार्च, 2004

का. आ. 951.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा.को.को. लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण II, धनबाद के पंचाट (संदर्भ संख्या 2/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-03-2004 को प्राप्त हुआ था।

[सं. एल.-20012/164/98-आई.आर. (सी-I)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 23rd March, 2004

S.O. 951.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 2/99) of the Central Government Industrial Tribunal/Labour Court, II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of B. C. C. Ltd. and their workman, which was received by the Central Government on 19-03-2004.

[No. L-20012/164/98-IR (C-1)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

Present : SHRI B. BISWAS, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1) (d) of the Industrial Disputes Act, 1947.

Reference No. 2 of 1999

PARTIES : Employers in relation to the management of Katras Project of M/S. B.C.C. Ltd. and Their Workmen.

APPEARANCE:

On behalf of the workman	:	None
On behalf of the employers	:	Mr. H. Nath, Advocate.

State : Jharkhand. Industry : Coal

Dated, Dhanbad, the 24th February, 2004

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferrred on them under Section 10(1) (d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/164/98-IR(C-1), dated the 16th December, 1998.

SCHEDULE

"Whether the action of the management of Katras Project of M/S. BCCL in dismissing Sri. Mathur Manjhi w.e.f. 3-10-92 from the services of the company only on the ground of absence from duty from 27-1-92 is justified? If not, to what relief the concerned workman is entitled?"

2. The case of the concerned workman according to the written statement submitted by the sponsoring union on his behalf, in brief, is as follows :—

The sponsoring union submitted that the concerned workman for his underground work as well as for performing hazardous job at Katras Project fell seriously ill and went to his native village for his treatment on 25-1-92. Being advised by the doctor he was under complete rest and after his recovery he returned back to the place of duty on 11-8-92 with medical certificate issued by a registerd doctor with a view to resume his duty. They submitted that management by order dt. 27/28-8-92 directed him to produce all relevant papers relating to his treatment which he complied with duly but he alleged that inspite submission of all medical papers management without accepting the same issued chargesheet to him with the allegation of committing misconduct on the ground of absentism and thereafter conducted domestic enquiry proceeding against him. The enquiry officer after conducting enquiry submitted his report holding the concerned workman guilty to the charges brought against him and thereafter diciplinary authority dismissed him from service without giving him any opportunity to hear him. It is the specific contention of the sponsoring Union that management illegally, arbitarily and violating the principle of natural justice dismissed the concerned workman form his service. Accordingly, they submitted representation to the management for his reinstatement but that too did not yield any result and for which the concerned workman raised an industrial dispute before the ALC(C)Dhanbad for conciliation which ultimately resulted reference to this Tribunal for adjudication.

3. Management on the contrary after filing written statement-cum-rejionder have denied all the claims and allegations which the sponsoring union asserted in the written statement on behalf of the concerned workman.

They submitted that as the concerned workman remained himself absent from duty without any prior intimation or permission of the management a chargesheet was issued against him for committing misconduct on 3-6-92 under clause 26-1-1 of the Certified Standing Order. They submitted that the concerned workman submitted his reply to the charesheet on 12-9-92 and disclosed that due to his sickness he remined absent from duty. They submitted that as the reply given by the concerned workman was not satisfactory Disciplinary Authority decided to hold domesstic enqurity against

him and for which appointed Mr. P.N. Singh as Enquiry Officer. They submitted that the concernd workman appeared and participated in the enquiry proceeding and fully defended his case. They further submitted that the enquiry officer after conducting domestic enquiry submitted report holding the concerned workman guilty to the charges and thereafter the Disciplinary Authority considering enquiry report and all other connected papers dimissed the concerned workman from his service by letter dt. 4-10-92. They submitted that the said order for dismissal was legal, *bonafide* and justified and for which he is not entitled to get his relief in view of his prayer.

4. POINTS TO BE DECIDED

"Whether the action of the management of Katras Project of M/s. BCCL in dismisssing Sri Mathur Manjhi, M/Loader w.e.f. 3-10-92 from the services of the company only on the ground of absence from duty from 27-1-92 is justified? If not, to what relief the concerned workman is entitled ?"

5. FINDING WITH REASONS

It transpires from the record that before taking up hearing of this case on merit it was considered if domestice enquiry conducted against the concerned workman was legal, valid and in accordance with the principle of natural justice. The said issue on preliminary point was disposed of vide Order No. 14 dt. 9-12-03 and it was decided that domestic enquiry conducted against the concerned workman by the enquiry officer was legal valid and in accordance with the principle of natural justice. Accordingly, at this stage I do not find any reason to reopen that issue again. Here the point for consideration is if the managment have been able to substantiate the charge brought against the concerned workman and if so whether the concerned workman is entitled to get any relief U/ s. 11-A of the I. D. Act.

Considering the evidence of MW-1 and also considering the facts disclosed in the pleadings of both sides I find no dispute to hold that the concerned workmen was posted at Katras Project as Miner/ Loader. It has been admitted by the concerned workman in his written statement that he leaving the place of his work went to his native village on 25-1-92. It has been submitted by him that due to hazardous work of miner/loader in the mine he fell serious ill and for which he went to his native village for his treatment. From his submission it tranpires that he came to the place of duty on 11-8-92. with medical certificate with a view to resume his duty.

On the contrary from the submission of the management it transpires that the concerned workman started absenting from duty with effect from 27-1-92 without any sanction leave or without prior permission of the management. They submitted that the concerned workman left the place of his work even without giving any intimation to the management and for which they issued a chargesheet dt. 3-6-92 under clause 26.1.1 of the certified standing order for committing misconduct on the ground of absentism. Management submitted further that the concerned workman submitted his reply to the chargesheet on 12-9-92 but as the reply given by him was not satisfactory the Disciplinary Authority decided to hold domestic enquiry against him and accordingly appointed Mr. P. N. Singh as Enquiry Officer.

Mr. P. N. Singh who was Personnel Officer at the relevant time during his examination as MW-1 disclosed that after taking charge of the Enquiry proceeding he issued notice to the concerned workman for causing his appearance at the time of hearing of the enquiry proceeding. He disclosed that on receipt of the notice concerned workman appeared and fully participated in the hearing. During his evidence copy of chargesheet issued to the concerned workman was marked as Ext. M-1 while his reply was marked as Ext. 2 chargesheet clearly shows that the concerned workman started remaining himself absent from duty unauthorisedly for more than 10 days with effect from 27-1-92. As such unauthorised absence amounted to misconduct under clause 26.1.1 of the certified standing order applicable to the workmen under the management, the management issued chargesheet to the concerned workman on 3-6-92. In the reply given by the concerned to the chargesheet on 12-9-92, he disclosed that owing to his illness he could not only attend to his duties but also failed to give any information to that effect. Therefore, the reply given by the concerned workman shows clearly that he remained absent from duty with effect from 27-1-92 unauthorisedly and without giving any intimation to the management. Concerned workman in his written statement disclosed that being directed by the management he submitted all relevant papers to them but he alleged that inspite of submitting those medical papers instead of accepting the same decided to hold domestic enquiry against him. Considering the record it transpires clearly that the concerned workman fully participated in the enquiry proceeding and signed the day to day enquiry proceeding papers which duly evidence of MW- 1 had been marked as Ext. M-5 to M-5/9.

Concerned workman during hearing of the enquiry proceeding neither could be able to show a single scrap of paper to justify his claim that being directed by the management he submitted all medical papers for his treatment nor he was able to furnish any such paper during hearing before enquiry officer and for which he was found guilty to the charge. In course of hearing the concerned workman got ample scope to justify his claim that owing to his illness he could not attend to his duties. Inspite of getting such scope the concerned workman did not consider necessary to produce a single scrap of medical paper to show that actually during the period of his absence he was lying ill. No satisfactory explanation is also forthcoming on his part why he did not consider

necessary to intimate the ground of his absence to the management within reasonable period from the date when he left the place of work *i.e.* on 27-1-92.

It is seen that the concerned workman started absenting from duty with effect from 27-1-92 unauthorised and without giving any information to the management. Management issued chargesheet to him on 3-6-92 and he gave his reply to the charge sheet on 12-9-92 *i.e.* continuously he remained absent without any information for more than eight and half months. As per clause 26.1.1 of the Certified Standing Order it is to be considered as misconduct if the workman remains absent from duty continuously for more than ten days without giving intimation or taking prior permission from the authority. Here in the instant case the concerned workman remained himself absent from duty without giving any intimation or taking prior permission of the management for a period of more than eight and half months. Accordingly management was justified to issue chargesheet to him. It was the duty of the concerned workman to justify the reason of his remaining unauthorised absence from such long period but he has lamentabley failed to do so I have carefully considered all the materials on record including papers relating to enquiry proceeding and I find sufficient reason to hold that management have been able to establish the charge brought against the concerned workman.

It transpires that the Disciplinary Authority after considering the enquiry report and all materials decided to dismiss the concerned workman from his service and General Manager approved the same. Enquiry report submitted by the Enquiry Officer and approval of G.M. for dismissal of the concerned workman during evidence of MW-1 were marked as Ext. M-6 and M-7 respectively. The order of dismissal of the concerned workman also during the evidence was marked as Ext. M-8.

6. Now the point for consideration is if the concerned workman is entitled to get any relief U/s. 11-A of the I.D. Act. Application of Sec. 11-A only can be considered if it is seen that the punishment inflicted on the concerned workman was not justified.

In view of my discussion above it is clear that that the concemed workman for a long period remained himself absent from duty unauthorisedly taking the plea of his ailment. He did not consider necessary to send any information to the management about the reason of his absence. Neither in course of hearing of enquiry proceeding nor in course of hearing before this Tribunal the concerned workman produced any medical paper in support of his claim that he was actually lying ill and that was the reason for his such long absence though unauthorised. After order of dismissal the concerned workman neither preferred any appeal before the appellate authority nor submitted any mercy petition for condonation of the misconduct., committed by him. No paper is also forthcoming to show that he submitted any prayer to the management with a view to give him a chance for rectification of his conduct in future.

To maintain discipline by the workman is the basic principle of any industry or in the mines not only for its growth and prosperity but also to maintain the administration properly. There is no scope for any workman to act whimsically as of his choice ignoring his duty which he is liable to perform so long he remains in service. Ld. Advocate for the management submitted in course of hearing that the concerned workman was a permanent miner/loader and for his long unauthorised absence production affected considerably. Apart from this fact Ld. Advocate futher submitted that the concerned workman wilfully absented himself from duty for such long period without giving any intimation to the management and in such case if the punishment imposed on him is viewed leniently in that case the other workmen may be provoked to commit such offence in future and if it is so done it will seriously affect the growth of the industry which will not only make the management sick but also economic growth of the country will be affected equally.

Considering my discussion above I find no dispute to hold that the concerned workman unauthorisedly remained absent for a long period. He had enough scope to intimate the reason of his absence but he did not consider necessary to do so. During enquiry proceeding he neither submitted any paper relating to his treatment nor submitted any petition for mercy. After order of dismissal he had the scope to submit mercy petition for condonation of misconduct committed by him. If all these aspects are taken into consideration it will expose that the concerned workman was not at all repentant for committing misconduct. Question of showing mercy only can be taken up for consideration if it is seen that he is actually repentant for the offence committed by him and if it is exposed that he sincerely intends to rectify his conduct. Here in course of hearing I have failed to find out anything relying on which there is scope to say that the concerned workman is actually repentant for his misconduct and he has prayed for mercy. In the circumstances I do not find any scope to say that management committed any unjustified act in dismissing the concerned workman from his service. Accordingly, I do not find any cogent ground to invoke the provision of Section 11.A of the I.D. Act to reconsider the punishment imposed on the concerned workman.

In the result, the following award is rendered :—

"The action of the management of Katras Project of M/s. BCCL in dismissing Sri Mathur Manjhi, M/Loader w.e.f. 3-10-92 from the services of the company only on the ground of absence from duty from 27-1-92 is justified. Consequently, the concerned workman is not entitled to get any relief."

B. BISWAS, Presiding Officer

नई दिल्ली, 23 मार्च, 2004

का० आ० 952.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा०को०को०लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-II, धनबाद के पंचाट (संदर्भ संख्या 36/1997) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-03-2004 को प्राप्त हुआ था।

[सं० एल-20012/54/96-आई०आर० (सी-I)]

एस० एस० गुप्ता, अवर सचिव

New Delhi, the 23rd March, 2004

S. O. 952.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 36/1997) of the Central Government Industrial Tribunal/Labour Court II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 19-03-2004.

[No. L-20012/54/96-IR(C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2 DHANBAD

In the matter of a reference under Section 10(1)(d)(2A) of the Industrial Disputes Act, 1947

Reference No. 36 of 1997

PARTIES: Employers in relation to the management of Lodna Colliery of M/s. B.C.C.L.

AND

their workman.

PRESENT: SHRI B. BISWAS, Presiding Officer

APPEARANCES:

For the Employers : Shri D.K. Verma, Advocate.

For the Workman : Shri D. Mukherjee, Adovcate

State : Jharkhand. Industry : Coal.

Dated, the 20th February, 2004

AWARD

By Order No. L-20012/54/96-IR (C-I) dated the 2nd April, 1997 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal :

> "Whether the action of the management of Lodna Colliery of M/s. BCCL is dismissing Sri Shiv Narayan Paswan, Pay Loader Operator from the service of the Company is justified ? If not, to what relief the concerned workman entitled ?"

2. The case of the concerned workman according to written statement submitted by the sponsoring Union on his behalf in brief is as follows :—

The sponsoring union submitted that the concerned workman was originally appointed as General Mazdoor in Category-I in the month of October, 1978 and posted at Lodna Colliery. Thereafter the concerned workman was selected as Dumper Operator and since 17-5-79 he had been working as permanent Dumper Operator and he was confirmed in Excavation Grade 'D' with effect from 1-1-90. They alleged that the management with some ulterior motive and being biased as the concerned workman was involved in his active trade union activities, issued a false and frivolous chargesheet dated 10-9-91 on the allegation of committing theft of Dumper No. BPR 2322 and forcibly driving away water tanker from the washery plant and for causing accident to the dumper. They submitted that after receipt of the said charge-sheet the concerned workman submitted reply and emphatically denied all the charges brought against him, but being dis-satisfied with the reply given by the concerned workman the Disciplinary Authority decided to hold domestic enquiry against the concerned workman and accordingly appointed an Enquiry Officer to that effect. The Enquiry Officer after holding a perverse enquiry submitted his report finding the concerned workman guilty of the charges and thereafter relying on the said finding of the Enquiry Officer the management illegally and arbitrarily and violating the priciple of natural justice dismissed him from service. After the order of dismissal the concerned workman submitted representation to the management for his reinstatement, but the management has failed to take any action. The concerned workman raised an industrial dispute before the A.L.C. (C) for conciliation which ultimately resulted reference to this Tribunal for adjudication.

3. The management, on the other hand, after filing written statement-cum-rejoinder have denied all the claims and allegations which the sponsoring union asserted in the written statement submitted on behalf of the concerned workman. They submitted that the concerned workman was engaged as Pay Loader Operator at Lodna Colliery in the month of September, 1991. On 9-9-91 he went to the garage of Shyamsul Mistry at Phusbungalow and unauthorisedly drove away the Dumper No. BPR 2322

without permission of the management and without the consent of the owner of the garage at about 8.30 PM. They submitted that there was sufficient reason to believe that the concerned workman made an attempt to steal away the dumper on 9-9-91 from the garage of Shyamsul Mistry at Phusbungalow where the said dumper was kept for reparing purpose. They alleged that in course of driving away the said dumper by the concerned workman it met an accident near Jamadoba More and as he could not move further be left the place leaving the dumper there. Thereafter the concerned workman on the same night came to the washery plant from where he tried forecibly to drive away the water tanker and took the same to Area from the Garage. He took Salim Khan, Water Tanker Driver, with him although he was not on duty and after sometime the water tanker was placed at the Washing Plant. As the act committed by the concerned workman amounted to serious misconduct as per clause 26.1.10, 26.1.11 and 26.1.15 of the Certified Standing Order a chargesheet was issued to him by the Disciplinary Authority. The concerned workman submitted his reply to the charge-sheet but as the reply given by him was not satisfactory the Disciplinary Authority appointed Sri H. G. L.Agarwal, Senior Porsonnel Officer of Lodna Colliery as Enquiry Officer.They submitted that the said Enquiry Officer conducted departmental enquiry against the concerned workman fairly and properly and gave full opportunity to the concerned workman to defend his case. They submitted that after completion of enquiry the said Enquiry Officer submitted his report holding the concerned workman guilty to the charges. Thereafter the Disciplinary Authority considering the enquiry report and all other factors dismissed the concerned workman from his service on 13-2-92. Accordingly, it is the contention of the management that the concerned workman is not entitled to get any benefit in view of his prayer and for which the claim of the concerned workman is liable to be rejected.

Ponits to be decided :

4. "Whether the action of the management of Lodna Colicry of M/S. BCCL in dismising Sri Shiv Narayan Paswan, Pay Loader Operator from the service of the Company is justified? If not, to what relief is the concerned workman entitled?"

Finding with reasons :

5. It transpires from the record that before taking up hearing of the instant case on merit it was considered if the domestic enquiry held against the concerned workman was fair, proper and in accordance with the principle of natural justice or not. The said issue on preliminary point was disposed of vide order No. 32 dated 19-10-2001 and it was observed that the domestic enquiry held against the concerned workman was not fair, proper and in accordance with the principle of natural justice and for which opportunity was given to the management to adduce fresh evidence in order to substantiate the charge brought against the concerned workman. In the decision reported in F.L.R. 1999(81) page 188 their Lordship of the Hon'ble Apex Court observed clearly that the record of enquiry held by the management, ceased to be "material on record" within the meaning of Sec. 11-A of the Act and only course open to the management was to justify its action by leading fresh evindence as required by the Labour Court. Relying on the decision referred to above opportunity was given to the management to adduce fresh evidence.

During hearing on merit the management examined two witnesses as MW-1 and MW-2 in order to substantiate the charge brought against the concerned workman. The charge which had been brought against the concerned workman under clause 26.1.10, 26.1.11 and 26.1.15 of the Certified Standing Orders is as follows:

"On 9-9-91 your duty was in 3rd shift at Washing Plant as a Pay Loader Operator. It has been reported that at about 8-30 P.M. while you were not on duty, you went to Garrage of Sri Samsul Mistry at Phos-bungalow and you unauthorisedly driven away the dumper No. BPR- 2322 else- where in order to steal away. On enquiry it has been found that the said dumper met with an accident near Jamadoba More. It has also been reported that at about 12.00 mid-night you forecibly driven the water tanker from Washing Plant and took to Area Auto garrage. On the way you took Sri Salim Khan, Water Tanker Driver who was not on duty. Later on the Water Tanker was found at Washing Plant.

The above act on your part constitute misconduct vide para 26.1.10, 26.1.11, 26.1.15 of the Certified Standing Orders for BCCL under which your services are govemed."

26-1-10 : Habitual indiscipline, or wilful insubordination or disobedience of any lawful or reasonable order of higher authority.

26-1-11 : Theft, fraud or dishonesty in connection with the Company's business or property.

26-1-15 : Causing wilful damage to work in progress or to the property of the employer.

You are hereby advised to submit your written explanation within 72 hours of the receipt of this Letter as to why disciplinary action shall not be taken against you, failing which it shall be assumed that you have nothing to say.

Pending enquiry you are hereby placed under suspension forthwith."

There is no dispute to hold considering the evidence of MW-1 and MW-2 and also considering all other material papers on record that the concerned workman was a Dumper

Operator posted at Lodna Area. MW-1 during his evidence disclosed that on 9-9-91 the concerned workman was on night shift duty.

At that time Md. Alamgir was the Supervisor and he was also on night shift duty. This witness disclosed that in the night of 10-9-91 while he came to his office the said Supervisor submitted written complaint to him to the effect that the concerned workman in the night in course of his duty took away the dumper which was placed for repairing in the garage of New Janta Electric Workshop at Phusbunglow, towards Jamadoba more. The said dumper on way to Jamadoba met an accident and got overturned. This witness disclosed that on receipt of the said complaint he made an enquiry and went to the spot and found the dumper lying in overturned condition. Accordingly he reported the incident to the superior officer an over that incident a domestic enquiry was held against the concerned workmen. This witness disclosed that in the domestic enquiry he discharged his duty as representative of the management. The written complaint of Md. Alamgir during his evidence was marked as Ext. M-1 and his endorsement thereto was marked as Ext. M-1/1. This witness disclosed that in course of his enquiry he examined four witnesses and recorded their statements, namely, Mukesh Prasad, Salim Khan, P.K. Sanyal and D.P. Singh. He admitted, however, that he did not present these witnesses before the Enquiry Officer at the time of domestic enquiry for recording their statements. MW-2 during his evidence disclosed that on 9-9-91 he was on night shift duty. He submitted that after attending his duty he was informed that the concerned workman was moving with water tanker from the washery. On getting that information he came infront of the garrage of the washery, and found the concerned workman sitting on the driver's seat of the water tanker. He submitted that the concerned workman left the garrage with the said water tanker inspite of his request not to move with the same. This witness disclosed that he heard that the said water tanker met an accident. Thereafter, over the said accident Sri S.K.Sinha, MW-1 stated an enquiry and recorded his statement. The statement recorded by Sri S.K. Sinha during his evidence was marked Ext. M-2/2 and the signature was marked Ext. M-2/4. Now considering the evidence of MW-1 and MW-2 it transpires that on the night of 9-9-91 the concerned workman first took away a dumper from the garage of New Janta Electric Workshop at Phusbunglow towards Jamadoba more and met an accident there as a result of which the said dumper was overturned. From the evidence of MW-2, on the contrary, it transpires that on the same night he found the concerned workman to take away water tanker from the garage driving the same and thereafter met an accident. MW-1 did not see the concerned workman took away the dumper garaged at New Janta Electric Workshop at Phusbunglow. He heard the incident from Md. Alamgir, supervisor, on the next day when he came to his office in the morning. He submitted that Md. Alamgir submitted a written complaint to that effect. Obviously, MW-1 did not see the concerned workman to take away the water tanker from the garage from the Workshop on the same night as he was not on duty. It is seen from MW-1 that the concerned workman attended his duty on that night. Therefore, it is to be considered that he left the place of duty and went to Phusbunglow in the garage of New Janta Electric Workshop and thereafter took away the dumper and met an accident at Jamadoba more. Thereafter from Jamadoba more he came to the Washing Plant and from the garage he took away water tanker to an unknown distinct place. From the evidene of MW-2 it transpires that he was alone while he was driving away the said dumper. No evidence is forthcoming on the part of the management that the action was taken against him for his wilful leaving of the place of duty. The management also in course of hearing have failed to produce the Attendance Register to show that the concerned workman attended any shift duty on 9-9-91. Mr. Alangir was the Supervisor. No evidence is forthcoming on the part of the management that he made any note in the Attendance Register about leaving the place of duty by the concerned workman in the midst of duty hours. The allegation which the management have brought against the concerned workman definitely is serious in nature. But inspite of considering the gravity of the offence committed by the concerned workman management did not consider necessary to lodge any F.I.R. against him. From MW-1 it transpires that the said dumper was garaged in the garage of Samsul Mistry for its repair. No evidence is forthcoming how the concerned workman collected the key of the dumper before he drove the same to Jamadoba area. There is no report of the mechanic expert to the effect that the dumper which was placed in the garage was in operating condition. MW-1 started enquiry against the concerned workman on the basis of complaint received from Md. Alamgir, Supervisor. He saw the concerned workman to take away the dumper from the garage of Samsul Mistry of Phusbunglow. I have failed to understand how it was possible for Md. Alamgir, Supervisor, to find the concerned workman to take away the dumper from the garage of Samsul Mistry from the place of his duty. The management has failed to give any satisfactory explanation to this effect. If it is considered that Md. Alamgir was also with him while the concerned workman took away the dumper then in that case there will be sufficient reason to hold that he assisted the concerned workman to take away the said dumper from the said garage particularly when he did not raise any voice when the concerned workman was in action in taking away the said dumper from that garage. Accordingly, I do not find any reason at all to believe the statement of Md. Alamgir,which he made before MW-1, S.K. Sinha in the morning when he came to his office. In course of hearing on merit the management had the scope to examine

Samsul Mistry, the owner of New Janta Electric Workshop. No evidence is forthcoming to say that the said dumper was at all handed over to the said garage for its repair. In this connection evidence of MW-2 may be taken into consideration. MW-2 during his evidence disclosed categorically that the management do not make any vehicle repaired by any outsider. He disclosed that all the vehicles are repaired at their own garage. Therefore, burden of proof absolutely rests on the management to establish that for special reason this dumper was handed over to the garage for its repair. MW-2 during his evidence further disclosed that Salim Khan was the allotted driver of the water tanker. On 9-9-91 Salim Khan came to his duty at late hours but prior to his arrival the concerned workman left the garage of the washing plant driving the said water tanker. This witness further disclosed that the driver of the water tanker after ending his shift duty handed over the key of the vehicle to the garage incharge. This witness has failed to disclose if the driver of the 2nd shift duty of the said water tanker handed over the key of the water tanker to the garage incharge after his duty was over. He further disclosed that when the shift duty starts the incharge of the garage is only authorised to hand over the key of the vehicle to its driver. Therefore, If the evidence of MW-2 is taken into consideration it will expose clearly that keys of all vehicles either remain in the custody of its driver or it remains in the custody of the Incharge. It is clear from the evidence of MW-2 that Salim Khan who was the driver of the said water tanker did not turn up when the concerned workman left the place driving away the said tanker. On the contrary facts disclosed in para-5 of WS has exposed quite a defferent picture as it speaks that Salim Khan was in the water tanker when it was driven qway by the concerned workman. The management did not consider necessary to examine the Driver of 2nd Shift duty to ascertain to whom he handed over the key of the water tanker before he left the garage. It is peculiar to note that the Garage Incharge did not submit any report in writing against the concerned workman about missing of the water tanker or taking away the water tanker by the concerned workman illegally. The management have brought three-fold charges against the concerned workman, the 1st charge in under clause 26.1.10 of the Certified Standing Orders. This clause speaks—"habitual indiscipline, or wilful insubordination or disobedience of any lawful or reasonable order of higher authority". I have considered the evidence of MW-1 and MW-2 very carefully and I have failed to find out an iota of evidence relying on which there is scope to say that the concerned workman committed any indiscipline act or showed any insubordination or disobedience to the management. Therefore, I find no scope to say that the concerned workman committed any misconduct for violating clause 26-1-10 of the Certified Standing Orders.

Clause 26-1-11 of the Certified Standing Orders speaks -- "theft, fraud or dishonesty in connection with the Company's business or property," while clause 26-1-15 of the Certified Standing Orders speak – "causing wilful damage to work in progress or to the property of the employer". It is the specific allegation of the management that the concerned workman with wilful intention took away the dumper and water tanker from the garage dishonestly and with the intention to steal the same. It is their further allegation that the said dumper on its way met an accident near Jamadoba more and for which the side dumper caused damaged seriously. The burden shifts on the management to establish the charge. In details I have discussed all the facts above and the management have failed to establish reasonably that the concerned workman was actively involved in stealing the dumper as well as the water tanker from the garage. No mechanical expert's report is forthcoming to show that as a result of accident the said dumper sustained seriously damaged. No evidence is forthcoming on the part of the management to show that it was the concerned workman who took away the dumper from the New Janta Electric Workshop of Samsul Mistry at Phusbunglow. They have failed to examine a single eye witness to substantiate their claim. The evidence of MW-2 relating to taking away of the water tanker is seriously contradictory and for which it cannot be relied at all.

6. Accordingly, after careful consideration of all the facts and circumstances, I have no hesitation to say that the management have failed to establish the charge brought against the concerned workman lamentably. Accordingly the order of dismissal issued by the management dated 18-2-1992 is liable to be set aside.

7. In the result, the following award is rendered —

The action of the management of Lodna Colliery of M/s.B.C.C.Ltd. in dismissing Sri Shiv Narayan Paswan, Pay Loader Operator, from his service is not justified. Accordingly, the concerned workman is entitled to be reinstated in service from the date of his dismissal i.e. 18-2-1992 with full back wages. The management is hereby directed to reinstate the concerned workman in service w.e.f. 18-2-1992 with full back wages within 30 days from the date of publication of the award in the Gazette of India.

B. BISWAS, Presiding Officer

नई दिल्ली, 23 मार्च, 2004

का. आ. 953.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार टिस्को लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-II, धनबाद के पंचाट (संदर्भ संख्या 125/1995) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-03-2004 को प्राप्त हुआ था।

[सं. एल-20012/349/94-आई.आर.(सी-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 23rd March, 2004

S. O. 953.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 125/95) of the Central Government Industrial Tribunal/Labour Court II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of TISCO Ltd. and their workman, which was received by the Central Government on 19-03-2004.

[No. L-20012/349/94-IR(C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) DHANBAD

In the matter of a reference under Section 10(1)(d)(2A) of the Industrial Disputes Act, 1947

Reference No. 125 of 1995

PARTIES: Employers in relation to the management of Digwadih Colliery of M/s. Tisco Ltd.

AND

Their workman.

PRESENT: Shri B. Biswas, Presiding Officer

APPEARANCES:

For the Employers : Shri G. Prasad, Advocate.

For the Workman : Shri K. Chakravarty, Advocate

State : Jharkhand. Industry : Coal.

Dated, the 19th February, 2004

AWARD

By Order No. L-20012/349/94-I.R. (Coal-I), dated, the 5th September, 1995 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-sec. (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

> "Whether the action of the management of Digwadih Colliery of M/s. TISCO Ltd. in dismissing Sri Rajendra Rai, w.e.f. 30-11-89 is justified? If not, to what relief the concerned workman is entitled ?"

2. The case of the concerned workman according to the written statement submitted by the sponsoring union on his behalf in brief is as follows :—

The sponsoring union submitted that the concerned workman was permanent employee of Digwadih Colliery. They alleged that on the basis of false charge-sheet with the allegation of committing misconduct the management conducted domestic enquiry against him which was not fair, proper and in accordance with the principle of natural justice. Inspite of that fact relying on the report of the Enquiry Officer the management dismissed the concerned workman from his service. They alleged that the Disciplinary Authority before passing the order of dismissal did not consider necessary to apply mind. On the contrary, just relying on the report of the Enquiry Officer dismissed the concerned workman from his service. They further submitted that the said order of dismissal passed by the management was illegal and not proper and they further submitted that it was too harsh and not proportionate according to the allegation of misconduct. Accordingly, they submitted representation for reinstatement of the concerned workman to his service before the management but as the management did not consider the same they have raised the instant industrial dispute which ultimately resulted reference to this Tribunal for adjudication. The sponsoring union accordingly submitted prayer to pass award directing the management to reinstate the concerned workman in service with full back wages and other benefits setting aside the order of dismissal passed against him with effect from 30-11-1989.

3. The management, on the contrary, after filing written statment-cum-rejoinder have denied all the claims and allegations which the sponsoring union asserted in the written statement submitted on behalf of the concerned workman. They submitted that the concerned workman was General Mazdoor Category-I at Digwadih Colliery. On 11.8.1989 he was scheduled to work in the 'A' Shift which commenced at 8 AM and ended at 4 PM. On that date he booked his attendance in Form 'C' Register kept under the provisions of Mines Act, 1952 read with Mines Rules, 1955 and reported to Sri S.L. Sharma, SME and Sri D.P. Roy, Overman at the beginning of the shift. He was allotted duty at 16th level of 15-A Seam to do the cleaning job of stone lying at that level. They alleged that instead of attending his duty at the required place the concerned workman surruptitiously left the mine and did not attend to his duty and at the end of the shift got his attendance out at about 4 PM. They disclosed that as the attendance had been marked in the Form 'C' Register indicating his presence inside the mine for the entire 'A' shift he could have received the wages for that day without doing his duty and without remaining inside the mine. They submitted that the absence of the concerned workman from duty at the 16th level of 15-A Seam was detected by Sri S.L. Sharma and Sri D.P. Roy during their inspection. They submitted that the workman must be present at the allotted place of work in accordance with the provisions of Regulation 38 of the Coal Mines Regulations, 1957. He is not entitled to roam about in the mine or to work at any place which is not allotted to him. In case any workman acts contrary to the aforesaid regulation, he commits a serious offence under the Mines Act and is liable to be prosecuted. They submitted that as the act of the concerned workman amounted to serious misconduct of dishonesty in connection with employers business, on 11-8-1989 he was issued a charge-sheet dated 14/17-8-1989 under clauses 19(2) and 19(18) of the Certified Standing Orders of the company. Against that charge-

sheet the concerned workman did not give any reply. Accordingly, the management appointed Sri A.K. Thakur, Sr. Personnel Officer of Digwadih Colliery as Enquiry Officer and Sri S.K. Nakra, Additional Manager as representative of the management. The management submitted that the Enquiry Officer, Sri A.K. Thakur conducted domestic enquiry against the concerned workman fairly, properly and in accordance with the principle of natural justice. They submitted that the concerned workman was given full opportunity to cross-examine the witness and also full opportunity was given to make his own statement and to produce defence witness. After completion of enquiry the Enquiry Officer submitted his report holding the concerned workman guilty to the charge brought against him. Thereafter the Disciplinary Authority after careful consideration of the enquiry report and also after giving proper application of mind in relation to the offence committed by the concerned workman. Dismissed from his service by letter dated 20.11.1989 under signature of the Agent of the Colliery.

Points to be decided:

4. "Whether the action of the management of Dihwadih Colliery of M/s. TISCO Ltd. in dismissing Sri Rajendra Rai with effect from 30.11.1989 is justified? If not, to what relief the concerned workman is entitled?"

Finding with reasons :

5. It transpires from the record that before taking up hearing argument on merit hearing on preliminary point was taken up to consider whether the domestic enquiry conducted against the concerned workman was fair, proper and in accordance with the principle of natural justice. The said issue was disposed of vide order No. 39 dated 13.12.2002 and it was held that the domestic enquiry conducted against the concerned workman by the Enquiry Officer was fair, proper and in accordance with the principle of natural justice. Accordingly, at this stage I do not find any cogent ground to re-open the issue again.

6. Here the moot question which is to be decided is whether the management has been able to substantiate the charge brought against the concerned workman and if so whether the concerned workman is entitled to get any relief under Sec. 11-A of the Industrial Disputes Act in the matter of punishment awarded to him by the Disciplinary Authority.

7. Considering the evidence of MW-1 and facts disclosed in the pleadings of both sides there is no dispute to hold that the concerned workman was a General Mazdoor Category-I at Digwadih Colliery. It is also admitted fact that on 11.8.89 the concerned workman was directed to work in the 'A' Shift which commenced from 8 AM in the morning and ended at 4 PM in the afternoon. It is also admitted fact that the concerned workman booked his attendance in Form 'C' Register kept under the provision of Mines Act, 1952 read with Mines Rules, 1955 and reported to Sri S.L. Sharma, SME and Sri D.P. Roy, Overman at the beginning of the shift. It is also admitted fact that the concerned workman allotted with duties at 16th level of 15-A Seam to carry out the cleaning job of stone lying at that level. The allegation of the management is that the concerned workman was not found in the place of his duty throughout the day though at the end of the shift he got his attendance out at about 4 PM. Such absence of the concerned workman from duty at the scheduled place was detected by MW-1, Sri S.L. Sharma and Sri D.P. Roy. It is the contention of the management that as the concerned workman was marked present in the attendance register they liable to pay wages to him for that day though the concerned workman did not work and without actually remaining inside the mine. They disclosed that as per provision of Regulation 38 of Coal Mines Regulations, 1957 it is mandatory on the part of a workman to remain present at the allotted place inside the mine and he is not entitled to roam about in the mine or to work at any place which is not allotted to him. They disclosed that as the conduct of the concerned workman amounted to serious misconduct of dishonesty in connection with employers business on 11.8.89 a charge-sheet was issued to him dated 14/17-8-89 under clauses 19(2) & 19(18) of the Certified Standing Orders of the company. The copy of the charge-sheet during evidence of MW-1 was marked as Ext. M-2. MW-1, who was Enquiry Officer and who conducted the domestic enquiry against the concerned workman during his evidence disclosed that the concerned workman not only participated in the enquiry proceeding fully but also he recorded his statement. Thereafter on completion of domestic enquiry he submitted his report to the Disciplinary Authority which during his evidence was marked Ext. M-3. From the enquiry report it transpires that the management examined three witnesses, namely, Sri S.K. Nakra, Additional Manager, Digwadih Colliery, Sri D.P. Roy, Overman and Sri S. L.Sharma, SME and recorded their statements. Sri S.K. Nakra at the time of giving his statement submitted that Rajendra Rai, Category-I Mazdoor was in 'A' Shift duty from 8 AM to 4 PM and he was instructed by Sri D.P. Roy, Sr. Overman and Sri S.L. Sharma, SME to attend his duty at 16th level of 15-A Seam for stone cleaning job. He disclosed that the concerned workman did not go to his place of duty at all and his whereabouts could not be located till end of the shift. Sri. D.P. Roy and Sri S.L. Sharma also corroborated the fact while they gave their statements before the Enquiry Officer. It is the specific contention of the management that had the absence of the concerned workman not been defected he would have drawn the wages for 11.8.89 without doing any work. It is seen from the enquiry report that due instruction was given to the concerned workman to attend the place of his duty for work on that relevant date. Though the concerned workman denying the allegation brought against him submitted that he performed his duty at the required place but during cross-examination he has failed to justify his claim. He also failed to disclose whether he had any occasion to meet Sri S.L. Sharma and Sri D.P. Roy while they visited 16th level

of 15-A Seam on 11.8.89. It is not expected that a person who works in the scheduled place with his co-worker would not be able to say their names at the time of enquiry. Sri S.L. Sharma and Sri D.P. Roy inspected the scheduled place on that date but they did not find the concerned workman to work there. No cogent reason has come forward relying on which there is scope to say that hatching up a conspiracy these two senior officials of the management deposed falsely against the concerned workman before the Enquiry Officer with a view to take its action against him. On the contrary, it is very much evident if the statement of the concerned workman is taken into consideration that he was not at all present at the scheduled place of his duty on 11-8-89 and thereby he committed misconduct in connection with employers business. The charge has been brought against the concerned workman as per clauses 19(2) and 19(18) of the Certified Stading Orders applicable to the workman of the management. Clause 19(2) of the Certified Standing Order relates to theft, fraud or dishonesty in connection with the company's business or property and clause 19(18) relates to leaving the work without permission. According to Section 19 any employee may be suspended, fined or dismissed without notice or any compensation in lieu of notice if he is found to be guilty of misconduct. It is the specific allegation of the management that the concerned workman committed misconduct of dishonesty with the employer on the ground that he was very much entitled to draw his wages without rendering any service though noted his attendance for that date i.e. 11-8-89.

After careful consideration of the materials on record it transpires that the concerned workman was posted at 16th level of 15-A Seam for cleaning job of stone lying at that level. The management has established that the concerned workman was not found present at the scheduled place of his duty. During enquiry proceeding he has failed to give any satisfactory explanation whether the concerned workman was present at the time of his duty hours. It is seen that the concerned workman noted his 'Hazira' on that day and even he signed the departure column of the Attendace Register at 4 p.m. Therefore, onus shifts on the concerned workman to establish that he performed duty at 'A' Shift on 11-8-89 at the scheduled place. I find no hasitation to say that in spite of getting opportunity the concerned workman has failed to establish that he performed his duty on that date at the scheduled place. As per Regulation 38 of the Coal Mines Regulations, 1957 a workman must be present at the allotted place of work. He is not entitled to roam about in the mine or to work at any place which is not allotted to him. The management submitted that in case any workman acts contrary to the aforesaid regulation he commits a serious offence under the Mines Act and even liable to be prosecuted. When there is mandatory provision as per Coal Mines Regulations that a workman should remain present inside the mine at the scheduled place of his duty it was not expected that he should remain present elsewhere leaving the place of his duty. Considering the materials on record of the enquiry proceeding papers there is sufficient reason to believe that the concerned workman remained himself absent throughout the duty hours during 'A' shift, but meticulously noted his attendance and departure in the Attendace Register with a view to show that he performed his duty. According to the submission there is reason to believe that the concerned workman with his dishonest intention accrued his right to claim wages for the day without performing any duty and incurring loss to the management.

8. Accordingly, after careful consideration of all the facts and circumstances I hold that the management has well been able to establish the charge brought against the concerned workman. Accordingly relyng on the provisions laid down under clause 19 of the Certified Standing Orders and also gravity of the offence committed by the concerned workman the Disciplinary Authority dismissed him from service.

9. Now, the point for consideration is if the concerned workman is entitled to get any relief under Sec. 11-A of the Industrial Disputes Act, 1947 in relation to punishment inflicted on him. According to Sec. 11-A the Tribunal may set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions if the Tribunal satisfies that the order of discharge or dismissal was not justified. Considering the facts and circumstances discussed above there is no scope to say that the Disciplinary Authority illegally, arbitrarily or violating the priciple of natural justice dismissed the concerned workman from his service. Accordingly in true sense there is little scope to say that the order of punishment inflicted on the concerned workman was unjustified. However, the learned Advocate for the concerned workman in course of hearing relying on the decision reported in 1989 Lab.I.C. 1043 submitted that the Tribunal has enough scope to set aside the order of dismissal and reinstate the concerned workman in service. I have carefully considered the decision of the Hon'ble Apex Court in this regard. Similarly learned Advocate for the management relying on the decision reported in 1960(1) Indian Factories & Labour reports page 9 and AIR 1959(SC)-529 submitted that the misconduct which the concerned workman committed if looked into with lenient view, in that case the position of this management will be at a stake to maintain the discipline amongst the workers in the matter of carrying out the jobs to be performed by them. I have carefully considered the decisions referred to above of the Hon'ble Apex Court and it transpires that the matter in issue in these two decisions has its parity with the dispute in the instant case.

Considering submissions of both sides and also after looking into all the pros and cons of this case I have failed to find out an iota of evidence relying on which there is

scope to say that the concerned workman repented for the offence committed by him. No evidence is also forthcoming that the concerned workman made an appeal before the management to give him opportunity for his rectification in life. On the contrary, he took his defence that he was very much at the place of his duty during scheduled hours that has been totally proved not correct during enquiry proceeding. If this fact is taken into consideration it shows that he took his defence to shield himself without showing any sign of repentance in spite of the fact that he committed serious misconduct. When a person inspite of committing offence does not show repentance for the same he does not deserve that the management will take lenient view in punishing him. I find no dispute to hold, considering all materials on record, that the concerned workman committed serious misconduct and inspite of committing such serious misconduct he did not express his repentance.

Accordingly, considering the balance of convenience and inconvenience I hold that the order of dismissal issued by the management against the concerned workman was justified and for which I do not find any scope to set aside the same invoking the provision of Section 11-A of the I.D.Act, 1947.

10. In the result, the following award is rendered—

"The action of the management of Digwadih Colliery of M/s. TISCO Ltd. in dismissing Sri Rajendra Rai, w.e.f. 30-11-89 is justified and hence, the concerned workman is not entitled to any relief."

B. BISWAS, Presiding Officer

नई दिल्ली, 23 मार्च, 2004

का० आ० 954.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा. को. को. लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-II, धनबाद के पंचाट (संदर्भ संख्या 87/98) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-03-2004 को प्राप्त हुआ था।

[सं. एल-20012/74/97-आई.आर.(सी-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 23rd March, 2004

S. O. 964.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 87/98) of the Central Government Industrial Tribunal/Labour Court II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of B. C. C. Ltd. and their workman, which was received by the Central Government on 19-03-2004.

[No. L-20012/74/97-IR(C-1)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT

Shri B.Biswas,

Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I. D. Act, 1947

Reference No. 87 of 1998

PARTIES: Employers in relation to the management of M/s. B. C. C. L and their workman.

APPEARANCES:

On bahalf of the workman : None.

On behalf of the employers : Mr. D. K. Verma, Advocate.

State : Jharkhand. : Industry : Coal.

Dated, Dhanbad, the 16th February, 2004

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1) (d) of the I. D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/74/97(Coal-I), dated, the 24th March, 1995.

SCHEDULE

"Whether the action of the management dismissing the services of Sri Krishna Bhuiya a Badli Miner Loader of Sendra Bansjora Colliery of BCCL is justified. If not, what relief the said workman is entitled to?"

2. The case of the concerned workman according to written statement submitted by the Sponsoring Union on his behalf in brief is as follows :—

Sponsoring Union submitted that the concerned workman got his appointment as Badli Miner/Loader at Sendra Bansjora Colliery in the month of August, 1980. They alleged that the management with the charge of impersonation all on a sudden stopped him from his service with effect from 4-3-81 vide office order No. 803/10/81/203 dt. 4-3-81. Immediately after passing that order the Sponsoring Union took up his matter with the management and the management again allowed his provisionally to resume his duty by issuing letter No. SB/PD/81/605 dt. 26-7-81. They alleged that immediately after resumption of duty management again stopped him from service without any official order and without as signing any reason thereof.

They submitted that the charge of impersonation brought against the concerned workman was false and fabricated and there was nothing to show by the management that he was impersonated by any one else. They further alleged that inspite of bringing the charge of impersonation management on that ground did not issue

any chargesheet to him. On the contrary by taking such illegal and arbitrary step they deprived him of his legitimate claim of working under the management. Even the management neither issued any notice nor paid any compensation before he was stopped from his work. Accordingly on behalf of the concerned workman they raised an industrial dispute for conciliation which ultimately resulted reference to this Tribunal for adjudication. The sponsoring Union accordingly submitted prayer on behalf of the concerned workman to pass award directing the management to reinstate him with full back wages.

3. Management on the contrary after filing written statement-cum-rejoinder have denied all the claims and allegations which the sponsoring Union asserted in the written statement submitted on behalf of the concerned workman. They alleged that the concerned workman got his employment fradulently and for which he was stopped from his duty and asked him to submit certificate from the competent authority of the State Government in support of his genuinity in the year 1981. Thereafter the concerned workman neither submitted any certificate to prove his genuinity nor raised any industrial dipute over stoppage of his duty.

They submitted that the concerned workman was a badli miner/loader. After a lapse of 14 years the sponsoring Union raising the present Industrial Dispute have claimed for his reinstatement which is not tenable in the eye of law. Accordingly they submitted prayer to pass award rejecting the claim of the concerned workman for his reinstatement in service.

POINTS TO BE DECIDED

4. "Whether the action of the management in dismisssing the services of Shri Krishna Bhuiya a Badli Miner/Loader of Sendra Bansjora Colliery of BCCL is justified. If not, to what relief the said workman is entitled to?"

FINDING WITH REASONS

5. It transpires from the record that neither the concerned workman appeared in course of hearing nor he considered necessary to adduce any evidence in support of his claim.

Management too declined to adduce any evidence as the concerned workman failed to adduce evidence in support of his claim.

Now relying on the facts disclosed in the pleadings of both sides I find no dispute to hold that the concerned workman got his appointment as badli miner/loader in the month of August, 1980 at Sendra Bansjora Colliery.

It is admitted fact that the service of the concerned workman was stopped by the management with effect from 4-3-81. It is the contention of the concerned workman that at the intervention of the sponsoring Union Management agreed to reinstate him in service with effect from 26-7-81 i.e. about 4 ½ months after the order of stopping of his work by the management. It is the contention of the concerned workman that immediately after joining to his service as badli miner/loader his service was again stopped by the management without assigning any reason. The management also did not consider necessary either to issue notice to him or paid any compensation before he was stopped from his work. It is admitted fact that charge of false impersonification was brought against him. The allegation of the concerned workman is that inspite of bringing such serious charge against him the management neither considered necessary to issue chargesheet to him nor they conducted any domestic enquiry against him.

On the contrary from the contention of the managenent it transpires that the concerned workman got his appointment by fradulent means and when it was detected they stopped him from work and asked him to produce relevant papers duly authenticated by the appropriate authority to show that he was genuine person. It is further contention of the management that thereafter he did not turn up with the required certificate in support of his genuinity. He also did not consider necessary to raise any industrial dispute at that time. On the contrary after a lapse of 14 years the present sponsoring Union has come forward with the claim of reinstatement of the concerned workman in service without producing any certificate about his genuinity. Accordingly, they submitted that the claim of the concerned workman is barred by limitation and for which he is not entitled to get any relief. Management further submitted that as the concerned workman did not turn up with the certificate of his genuinity question for issuance of chargesheet or holding domestic enquiry against him did not arise.

Therefore, considering the facts disclosed in the pleadings of both sides it is clear that the claim and counter claim rests on the genuinity of the person concerned. It is the specific allegation of the management that the concerned workman got his employment by fradulent means and accordingly asked him to produce certificate to show that he was a genuine person. It is the specific contention of the sponsoring Union that the management illegally and arbitrarily has brought a false charge against the concerned workman. Therefore, to establish the fact that the management have brought false charge against the concerned workman could have submit the required certificate in support that he was a genuine person and did not get his employment by way of fradulent means. It is seen that inspite of getting ample opportunity the concerned workman did not consider necessary to show any such paper. He also did not consider necessary to explain the reason for non-production of that certificate. The concerned workman was stopped from his work immediately after 26-7-81. No material fact is forthcoming before this Tribunal if the concerned workman immediately after he was stopped from his work raised any industrial

dispute with a view to get his relief, It is seen from the reference that the present sponsoring Union raised the industrial dispute in the year 1997. Therefore, it is clear that the concerned workman kept himself mum for about 16 years without raising any industrial dispute. The concerned workman cannot avoid to explain which circumstances compelled him to remain himself silent for such long years without raising any industrial dispute after he was stopped from work. I have carefully considered the facts disclosed in the written statement submitted by the concerned workman but therefrom I have failed to find out any explanation the delay of about 16 years was made in raising the industrial dispute.

The first condition which the concerned workman was liable to comply was of production of certificate in relation to his genuinity apart from his explanation for causing abnormal delay in raising industrial dispute.

I find no hesitation to say that the concerned workman has lamentably failed to establish the claim with a view to falsify the allegation which the management have brought against him. Apart from this fact the concerned workman without giving any satisfactory explanation has made inordinate delay in raising Industrial Dispute which ultimately led to make reference for adjudication.

Accordingly, after careful consideration of the facts disclosed in the pleadings of both sides I find no hesitation to say that the concerned workman inspite of getting ample opportunities have failed to justify his claim and for which he is not entitled to get any relief.

In the result, the following Award is rendered:—

"The action of the management in dismissing the services of Shri Krishna Bhuiya, a badli Miner/Loader of Sendra Bansjora Colliery of M/s. B.C.C.L. is justified. Consequently, the concerned workman is not entitled to get any relief."

B. BISWAS, Presiding Officer

नई दिल्ली, 23 मार्च, 2004

का. आ. 955.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा. को. को. लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-II, धनबाद के पंचाट (संदर्भ संख्या 1/1994) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-03-2004 को प्राप्त हुआ था।

[सं. एल-20012/365/92-आई.आर.(सी-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 23rd March, 2004

S. O. 955.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1/1994) of the Central Government Industrial Tribunal/ Labour Court-II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of B. C. C. L. and their workman, which was received by the Central Government on 19-03-2004.

[No. L-20012/365/92-IR(C-1)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

In the matter of a reference under Sec. 10(1) (d) (2A) of the Industrial Disputes Act, 1947.

Reference No. 1 of 1994

PARTIES: Employers in relation to the management of Sendra Bansjora Colliery of M/s. B. C. C. L.

AND

Their Workman.

PRESENT : Shri B. Biswas, Presiding Officer.

APPEARANCES:

For the Employers : Shri H. Nath, Advocate.

For of the Workman : Shri D. Mukherjee, Advocate.

State : Jharkhand. Industry : Coal.

Dated, the 16th February, 2004

AWARD

By order No. L-20012/365/92-I.R.(Coal-I) dated the 30th September, 1993 the Central Govt. in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal:

"Whether the action of the management of Sendra Bansjora Colliery of BCCL in denying promotion/ regularisation to Shri Rambriksh Singh, Dumper Operator in Gr. 'B' is justified? If not, to what relief the workman is entitled for?"

2. The case of the concerned workman according to the written statement submitted by the sponsoring union on his behalf in brief is as follows :—

The sponsoring union submitted that the concerned workman, Rambriksh Singh was appointment as Dumper Operator (Trainee) vide appointment letter No. BCCL/PA-11/5/2/72/(C)/82/2676/Mg. dated 7-4-82 and placed in Excavation Grade 'E'. His training period was for one year at Sendra Bansjora Colliery. They submitted that after completion of successful training period the said concerned workman was absorbed as Dumper Opertor in Excavation Grade 'D'

in the year 1983 and thereafter he got his promotion as Dumper Operator in Grade 'C' in 1987. They disclosed that the concerned workman being Dumper Operator was also considered for the payment of difference of wages of Excavation Gr. 'B' vide Office Order No. SB/Dy. C.M.E./86/6/11 dated 5-1-87, as he was asked to operate higher capacity of Dumper. It has been submitted by the sponsoring union that the management of Sendra Bansjora Colliery conducted D.P.C. in 1990 although two other co-workmen, namely, Parsuram Singh and Bharat Singh who were junior to him got their promotions in Excavation Grade 'B' vide Office Order dated 16-11-90, but the management ignored his claim for his placement in Excavation Gr. 'B' as per Coal Wage Board Recommendation. They alleged that the case of the concerned workman was discriminated in reference to his juniors by the management of Sendra Bansjora Colliery without any valid reason and in wrong manner. They disclosed that the concerned workman is operating the dumper of much higher capacity i.e. 50 M.T. quite efficiently from 5-1-87. In accordance with Implementation Instruction No. 16 dated 22-2-1984 of JBCCI, the Dumper Operator operating Dumper to the capacity of 50 M.T. is entitled for Excavation Grade 'A' but the management of Sendra Bansjora Colliery have denied even Excavation Grade 'B' to him. Accordingly, the concerned workman raised an industrial dispute before the A.L.C.(C), Dhanbad for conciliation which ultimately resulted reference to this Tribunal for adjudication.

3. The management, on the contrary, after filing written statement-cum-rejoinder have denied all the claims and allegations which the sponsoring union asserted in the written statement submitted on behalf of the concerned workman. They submitted that the concerned workman was appointed in Category 'E' to the post of Driver Trainee with effect from 7-4-82 in Excavation Grade-E and he was promoted as Dumper Operator in Excavation Category "C" w.e.f. 24-2-87 and is being paid difference of wages of category "B" with effect from 1-4-88 on account of operating 50 tonnes capacity of Haul Pack as and when required basis. But difference of wages of Excavation Category "B" is being paid regularly irrespective of operation of 50 tonnes capacity of Haul Pack. They submitted that the concerned workman appeard in trade test conducted in the year 1990 in which he failed. Accordingly the D.P.C. did not recommend his case for promotion to the next higher grade. They disclosed that the pass mark in the trade test was 16 out of 40, but the concerned workman secured 15 marks for which D.P.C. could not recommend his case for promotion and this fact was communicated to the concerned workman vide office order No. SB/SA/PD/91/7/1766 dated 1-2-1991 in reference to his representation dated 26-11-90. They disclosed that two other workmen, namely, Bharat Singh and Parshu Ram Singh were promoted in Category 'B' w.e.f. 16-11-90 as they qualified in the trade test. They submitted that the demand of the sponsoring union for regularisaton of the concerned workman as Dumper Operator in Grade "B" is baseless, false and mischievous. After failure in trade test the concerned workman and the union can not ask for promotion in Grade-"B". They submitted that the D.P.C. did not show any discriminaton in considering the promotional matter of the concerned workman. As the concerned workman could not come out successfully in trade test so his name was not recommended by the D.P.C. and for which his promotional matter could not be considered by the management. Accordingly, the management submitted that the concerned workman is not entitled to get any relief in view of his prayer.

POINTS TO BE DECIDED:

4. "Whether the action of the management of Sendra Bansjora Colliery of BCCL in denying promotion/ regularisation to Shri Rambriksh Singh, Dumper Operator in Gr. 'B' is justified. If not, to what relief the workman is entitled for?"

FINDING WITH REASONS

5. It transpires from the record that the concerned workman in order to substantiate his claim examined himself as WW-1 while the management also in order to establish their claim examined one witness as MW-1.

Considering the evidence of WW-1 and MW-1 and also considering the facts disclosed in the pleadings of both sides, I find no dispute to hold that the concerned workman got his appointment as Trainee Dumper Operator at Sendra Bansjora Colliery in the year 1982. After completion of his one year training he was placed in Excavation Grade 'D' in the year 1983 and thereafter he got his promotion in Excavation Grade 'C' in the year 1987. It has been admitted by the management that w.e.f. 1-4-88 on account of operating 50 tonnes capacity of Haul Pack as and when required basis the difference of wages of Excavation Category 'B' is being paid regularly to the concerned workman irrespective of operation of 50 tonnes capacity of Haul Pack. It is clear accordingly from the admission of the management that since April, 1988 the concerned workman was allowed to operate 50 tonnes capacity of Dumper. Considering the evidence of both sides, I find no dispute to hold that D.P.C. was held in the year 1990. In the said D.P.C., according to the management, the concerned workman appeared but as he could not succeed in the trade test the D.P.C. did not find any scope to recommend his name for promotion in Excavation 'B' Dumper Operator. Actual dispute comes in from this place. From the evidence of MW-1 it transpires that according to DPC's statement 90 workman including the concerned workman appeared before the said D.P.C. The serial number of the concerned workman was 21 as per the statement. The statement during his evidence was marked as Ext. M.1. The list of Dumper Operators who have been authorised to operate 50 tonnes capacity of Haul Pack was marked as Ext. M-2, while the procedure to be followed in holding test of the workman duly signed by the Chairman of DPC was marked Ext. M-3. This witness disclosed that according to this norm qualifying marks in trade test was 16. He disclosed that the concerned workman appeared in the said test and he obtained only 15 marks and for which

DPC could not get scope to recommend his name for promotion. The proceeding of DPC dated 14-11-90 duly signed by all the five members of the DPC was marked as Exts. M-5 and M-5/1. On the contrary, from the evidence of the concerned workman it transpires that when DPC came to know at the time of his test that he was operating Dumper of 50 tonnes capacity, they did not take any test from him for considering his promotion to Grade 'A' taking the plea that there was no need to take test as he was operating Dumper of 50 tonnes capacity. He dislosed that on the contrary without holding test the members of DPC took his signature on some papers and thereafter released him. Sometime thereafter when he went to the office of the management with a view to know the result of DPC he came to know that DPC declared him unfit for promotion as drill operator. This witness disclosed that he never worked as drill operator under the management and therefore the question of unfit for promotion as drill operator in Grade 'B' was wrong. The statement showing the names of the workman who appeared before the DPC shows that in serial No. 21 the name of the concerned workman was recorded as drill operator. However, it was struck down and thereafter recorded as Dumper Operator. It is not the claim with the management whether designation of the concerned workman recorded in the statement as drill operator was a mistake or something else and subsequently when it was detected the same was corrected. This statement shows all the particulars relating to the date of appointment and result of the examination conducted by the D.P.C. It has been admitted by the management that the DPC conducted examination on the basis of norm fixed by them which was duly signed by its Chairman. As per the said norm total mark was fixed as 100 and that 100 marks has been sub-divided in 4 groups, namely :

(a)	Experience/seniority	10
(b)	Qualification	20
(c)	C.R.	30
(d)	Trade Test	40

(a) Experience/Seniority—Out of maximum marks i.e. 10, 2 marks for each year beyond eligibility period and full marks beyond 5 years.

(b) Qualification—It is divided into two group i.e. educational and professional :

(1)	Educational	13
(2)	Professional	7

(1) Educational :—

(a)	Matriculate	5
(b)	I.A. & above	6
(c)	Non-matric	2

(c) C.R. —C.R should be of last one year.
A—1A × 3
B—1B × 2
C—1C × 1

(b) Trade Test—Out of maximum marks 40, 40% i.e. 16 marks shall be qualifying marks.

Out of 100 marks, overall 40% will be qualifying marks subject to qualifying marks in the Trade Test. Therefore according to the norm the pre-condition for recommending the name of any workman for his promotion is that the workman should obtain qualifying mark in the trade test. It is the specific contention of the management that the concerned workman secured 15 marks in the trade test though maximum qualifying mark was fixed at 16. Accordingly, there was no scope on the part of the DPC to recommend his name for promotion in Excavation Grade "B". The concerned workman during his evidence admitted that in the year 1998 he got his promotion as Dumper Operator Grade 'B'. in view of recommendation made by DPC, therefore, there is no dispute to hold that since 1998 the concerned workman is discharging his duty as Dumper Operator Grade 'B'. His claim was to get his promotion as Dumper Operator Grade 'B' in the year 1990. He disclosed that his juniors, namely, Parasuram Singh and Bharat Singh got their promotions in Excavation Grade "B" by the management without considering his promotion. The management categorically explained the reason for the same. They submitted that in the DPC held in 1990 those two persons though junior to the concerned workman appeared and they came out successfully and for which they got their promotion in Excavation Grade "B" but as the concerned workman could not come out successfully in the trade test there was no scope on their part to promote him in Excavation Grade "B". They disclosed that subsequently in view of recommendation of DPC the concerned workman is working in Excavation Grade "B" as Dumper Operator. They submitted that promotion in Excavation group is a cadre post and it is to be guided absolutely as per circular of JBCCI and also on the basis of recommendation of DPC. They do not have any scope to give promotion to any workman by-passing cadre scheme as well as DPC.

Learned Advocate for the concerned workman submitted that the concerned workman since 1988 is operating Dumper of 50 tonnes capacity. Accordingly, he is very much entitled to get the grade of Senior Dumper Operator but the management though taking his service is not considering to pay any benefit of Senior Dumper Operator. However, it is not the case to be decided here and for which there is no scope to consider this aspect. There is no doubt that the concerned workman is operating Dumper of 50 tonnes capacity since 1988 and for which he deserves to get his promotion in Excavation Grade 'B' in the year 1990. It is seen that the management by-passing the recommendation of DPC as well as JBCCI could not get any scope to consider his promotion in Excavation Grade 'B' as he came out unsuccessfully in DPC trade test.

6. In view of the facts and circumstances discussed above, I do not find any scope to hold that the concerned workman deserves to get any benefit in the eye of law for which he is not entitled to get any relief.

7. In the result, I render the following award:—

The action of the management of Sendra Bansjora Colliery of M/s. BCCL in denying promotion/ regularisation to Shri Rambriksh Singh, Dumper Operator in Gr. 'B' is justified and hence the concerned workman is not entitled to get any relief.

B. BISWAS, Presiding Officer

नई दिल्ली, 23 मार्च, 2004

का.आ. 956.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण II धनबाद के पंचाट (संदर्भ संख्या 20/1996) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-03-2004 को प्राप्त हुआ था।

[सं. एल-20012/55/95-आई आर(सी.-I)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 23rd March, 2004.

S.O. 956.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 20/1996) of the Central Government Industrial Tribunal/Labour Court II Dhanbad now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of C.C.L. and their workman, which was received by the Central Government on 19-03-2004.

[No. L-20012/55/95-IR(C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL No 2, DHANBAD.

In the matter of a reference U/S. 10(1)(d)(2A) of the Industrial Disputes Act, 1947.

Reference No. 20 of 1996

Parties : Employers in relation to the management of Jharkhand Project of M/S. C.C. Ltd.

AND

Their Workmen.

Present : Shri B. Biswas, Presiding Officer.

APPEARANCES

For the Employers : Shri D.K. Verma, Advocate.

For the Workmen : Shri B.B. Pandey, Advocate.

State Jharkhand. : Industry : Coal.

Dated, the 10th February, 2004.

Award

By Order No. L-20012/55/95/I.R. (Coal-I) dated the 29th February, 1996 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the action of the management of Jharkhand Project of C.C.L. in confirming the suspension as punishment of Shri Manohar Singh for the period 22-5-90 to 30-6-90 and not paying wages for that period is justified? If not, to what relief the workman is entitled ?"

2. The case of the concerned workman according to the written statement submitted by the sponsoring union on his behalf, in brief, is as follows :

It has been submitted by the sponsoring union that the concerned workman was Shovel Operator at Jharkhand Project under the management. On 21-5-1990 the management issued a charge-sheet-cum-suspension order to the concerned workman. In response to that charge-sheet concerned workman submitted his reply on 22-5-90 but the management being dissatisfied with the reply given by the concerned workman decided to conduct domestic enquiry against him and accordingly appointed one Enquiry Officer to hold the said enquiry against him. They alleged that after concluding domestic enquiry the said Enquiry Officer though submitted his reply, the Disciplinary Authority did not communicate him by any letter regarding confirmation of suspension as punishment. On the contrary, the management withheld his wages for the period of suspension from 22-5-90 to 3-6-90. They alleged that the management illegally and arbitrarily and without following the principle of natural justice refused to pay wages during the period of his suspension, without issuing any order of punishment against him. Accordingly, an industrial dispute was raised which ultimately resulted reference to this Tribunal for adjudication.

3. The management, on the contrary, after filing written statement-cum-rejoinder, have denied all the claims and allegations which the sponsoring union asserted in the written statement on behalf of the concerned workman. The management submitted that on 21-5-1990 the concerned workman who was Shovel Operator not only threatened but also abused the Colliery Manager, Shri Y. K. Singh at about 11.15 A.M. and thereafter left the place of work causing loss of production due to stoppage of operation of the shovel from 11 A.M. to 2 P.M. Accordingly the Disciplinary Authority issued the charge-sheet dated 21-5-90 to the concerned workman and suspended him from his duty with effect from 22-5-90 and was allowed to resume his duties with effect from 4-6-90. They submitted that the concerned workman gave reply to the charge-sheet issued to him, but as the reply given by him was not satisfactory, the Disciplinary Authority appointed T.K. Sarkar, Personnel Manager (Administration) as Enquiry Officer to conduct the departmental enquiry against the concerned workman. The said Enquiry Officer conducted the departmental enquiry against the concerned workman which began from 25-5-90 and ended on 29-7-91 and after completion of enquiry the said Enquiry Officer submitted his report holding the concerned workman guilty to the charges. They submittted

that during enquiry proceeding the concerned workman defended his case fully through his co-worker. They disclosed that the Disciplinary Authority considering the enquiry report and also considering all other relevant papers took lenient view and confirmed the suspension of the concerned workman with effect from 22-5-90 to 3-6-90 as a measure of penalty for the misconduct committed by him. They further submitted that the action taken by them against the concerned workman was legal, bona fied in accordance with the principle of natural justice and for which the concerned workman is not entitled to any relief accordingly to his prayer.

Points to be decided :

4. Whether the action of the management of Jharkhand Project of C.C.L in confirming the suspension as punishment of Shri Manohar Singh for the period 22-5-90 to 30-6-90 and not paying wages for that period is justified ? If not, to what relief the workman is entited ?"

Finding with reasons :

5. It transpires that before taking up hearing argument on merit it was considered if the domestic enquiry held against the concerned workman by the management was fair, proper and in accordance with the principle of natural justice. By order No. 47 dated 10-7-2003 it was observed that the domestic enquiry conducted by the Enquiry Officer against the concerned workman was fair, proper and in accordanace with the principle of natural justice. Accordingly, at this stage there is no reason to enter into the facts relating to the domestic enquiry any further. Here the point for consideration is whether the management has been able to substantiate the charge brought against the concerned workman or not. It transpires from the record that in course of hearing on preliminary issue the charge-sheet-cum-suspension order issued against the concerned workman by the management was marked as Ext. M-1 which is as follows :

> "I hereby require you to state as to why disciplinary action even amounting dismissal from the service of CCL should not be taken against you under the Model Standing Orders by which your services are governed on account of the following charges :
>
> On 21-5-90 at about 11.15 A.M. while you were on duty, you came to the Colliery Manager leaving the place of duty and abused him in filthy language. Threatened to stop the Shovel operation. You also stopped the Shovel operation from 11 A.M.

In the above charges are proved they would constitute acts subversive of discipline and also constitute misconduct under the Model Standing Orders 17(i) sub clauses (p), (r) and (i) and even otherwise considering what is misconduct has to be reasonably construed.

You are required to submit your explanation in respect of the above charges so as to reach the undersigned not later than 48 hours of receipt of this charge-sheet. Should you fail to submit your explanation in the prescribed proforma it will be presumed that you have no explanation to offer that you accept the charges framed against you and that thereafter the case can be disposed of by the competent authority without any further reference to you.

Pending enquiry and decision into the charges, you are hereby placed under suspension with effect from 21-5-90 (noon) until further orders. You will be entitled to subsistance allowance as per rule, for the suspension period. During the period of your suspension you will not leave the station and call on every working days in the office or Personnel Section, Jharkhand Colliery for getting your presence marked in separate register kept for this purpose and for receiving any instruction or communication intended, if any. You can only then leave the office after such action taken.

Sd/-

Agent/Project Officer,
Laiyo-Jharkhand Opencast."

The report of the Enquiry Officer during his evidence was marked as Ext. M-6. I have carefully considered the report and it transpires from the report that the management examined three witnesses on their part to establish the charge against the concerned workman. On the contrary, the workman concerned examined three witnesses in support of his plea of innocence. It transpires from the statement of MW-1 R.A. Ekka, J.M.E. that at the relevant time of the incident he was near the Rest Shelter. V. K. Singh, Colliery Manager while came near the said Rest Shelter the concerned workman came infront of him in a very angry mood and at the time he found a hot conversation in between him and Mr. V. K. Singh. During that hot discussions the concerned workman used some filthy language and threatened to V. K. Singh and denied to operate the shovel further. He submitted that thereafter the said electric shovel remained idle from 11 A.M. to 2 P.M. due to non-operation of the same by the concerned workman. MW-2 Anul Hussain, who was Driver, during his examination admitted that he did not see the incident with his own eyes but he heard the incident. Sri V.K. Singh, Colliery Manager, was examined as MW-3. This witness at the time of giving his statement before the Enquiry Officer disclosed that on 21-5-90 while he was near P. C. 300 Shovel at Jharkhand O.C.P. between 11 A.M. to 11.15 A.M. the concerned workman alongwith Upendra Singh came to him and approached for his leave. He also produced an application for leave duly forwarded by TME (Shift Incharge). At the time he disclosed to the concerned

workman that he would not be able to grant leave until and unless he has discussion with Sri Ekka, Shift Incharge and thereafter this witness alongwith the concerned workman came to Sri Ekka and asked the reason as to why that case was forwarded to him. In reply Shri Ekka told that both the relievers were not available to relieve him i.e. the concerned workman and for which he forwarded this case to the Colliery Manager to get the sanction of O.T. Thereafter Shri V. K. Singh refused to grant leave to the concerned workman and then being excited he abused Sri Singh in filthy language and thereafter stopped operation of the shovel for which he was deputed. The witnesses on behalf of the delinquent, on the contrary, at the time of giving their evidence disclosed that though there was talk over granting leave in between the concerned workman and Sri V. K. Singh there was no such incident as alleged by the management. It is seen that the Enquiry Officer after recording statements of the management's witnesses as well as the witnesses of the delinquent just opined in this way :

> "In view of above all the charges levelled against Manohar Singh, Shovel Operator, has been established."

It is really astonishing to note that the Enquiry Officer did not consider necessary to discuss in details on the basis of which material facts he had drawn the conclusion that the charge brought against the concerned workman was proved. It is seen that against the concerned workman two-fold charges has been brought as per charge-sheet. The first charge was that while the concerned workman was on duty he abused the colliery manager in filthy language and the second charge is that after abusing the colliery manager in filthy language threatened to stop the shovel and stopped the operation of shovel from 11 A.M. Therefore, burden of proof rests on the management to establish the charge brought against the concerned workman. Considering the statements of the management's witnesses it transpires that MW-1, R. A. Ekka was the eye witness to the incident in question. He narrated the incident which I have already discussed above. The victim, i.e. Sri V. K. Singh, colliery manager, also gave his statement before the Enquiry Officer. If the statements of these two witnesses are taken into consideration it will be seen that there is serious contradiction in between their statements. The statement of MW-1 speaks clearly that there was not discussion in between the concerned workman and the said colliery manager and in the midst of that hot discussion the concerned workman not only used filthy language but also threatened the colliery manager. While from the evidence of the colliery management I do not find any whisper that the concerned workman had threatened or not. He disclosed that the concerned workman abused him in filthy language while he refused to grant leave. MW-3, however, remained silent whether there was any hot discussion in between him and the concerned workman. It is seen that the concerned workman got himself excited as the Colliery Manager refused to grant him any leave. On the contrary, the witness on the part of the delinquent submitted that there was no such incident as alleged by the management. They admitted that the concerned workman entered into a discussion with the colliery manager in the matter of granting leave. The management during evidence have failed to examine any independent witness to corroborate the allegation in question. The statements of MW-1 and MW-3 appear to be in contradiction and for which relying on such Contradictory statements it is very hard to believe the allegation in question, particularly when witnesses on the part of the delinquent denied the fact categorically. No cogent paper is forthcoming on the part of the management that immediately after that incident the Colliery Manager reported the matter to the Appropriate Authority to lodge F.I.R. against the concerned workman at local police.

6. It is the further allegation of the management that after the incident the concerned workman left the place of his duty for which the shovel remained unoperated from 11 A.M. to 2 P.M. The management in course of hearing has failed to produce the Attendance Register to show that there was a note to the effect that he left the place of his duty from 11 A.M. to 2 P.M. As such, just on the basis of this statements I do not find sufficient ground to believe such allegation. It should be borne into mind that the colliery manager is to be considered as interested witness as it transpires that he was involved in hot discussion with the concerned workman when he refused to grant any leave in view of the prayer made by the concerned workman. Hot discussion entered into between the parties is not the subject-matter of charge. The subject-matter of charge is that the concerned workman abused the colliery manager. MW-1 exceeding his limit at the time of giving statement added further that the concerned workman at the time of incident used filthy language and also threatened the colliery manager which was not at all supported by the Colliery Manager himself when he made statement before the Enquiry Officer. Therefore, the statement of MW-1 cannot be considered as trust-worthy. Apart from MW-1 and MW-3 the management have failed to produce any such relevant paper in support of the alleged incident for which charge-sheet was issued to the concerned workman. I find no hesitation to say that the Enquiry Officer in a very reluctant mood completed the enquiry proceeding and prepared his report. He did not consider necessary to assign reason how he drew conclusion that the concerned workman was found guilty to the charges brought against him. Therefore, in absence of any finding such report of the Enquiry Officer cannot be accepted at all.

7. The management in course of hearing before this Tribunal submitted all the enquiry papers but did not consider necessary to submit the order of the management

in the matter of awarding punishment against the concerned workman being approved by the appropriate authority. No cogent reason has been assigned by the management why they have failed to produce this important paper to consider that the Appropriate Authority applied his mind before coming into the decision of awarding punishment to the concerned workman. Application of mind by the Appropriate Authority is to be taken into consideration with all deligence to draw conclusion that the appropriate authority rightly observed the enquiry report and other relevant papers and come to the conclusion that the misconduct committed by the concerned workman was established sufficiently and for which he deserved punishment. In absence of any such paper there is no scope to draw any conclusion to the effect that the appropriate disciplinary authority applied his mind before awarding punishment to the concerned workman.

8. It is this specific allegation of the concerned workman that no such order of punishment was communicated to him. It is admitted fact that the management at the time of issuance of chargesheet also issued order of suspensions with effect from 22-5-90. It is admitted fact that the concerned workman remained under suspension till 3-6-90. The said period of suspension was considered as punishment which has been claimed by the management but until and unless such order is placed before this Tribunal there is no scope to draw any such conclusion that any such order at all was passed. Moreover, burden of proof absolutely rests on the management to establish that the order of punishment was communicated to the concerned workman.

Accordingly, after careful consideration of all the facts and circumstances which I have already discussed above, I hold that the management have failed to establish the charge brought against the concerned workman.

9. In the result, the following award is rendered—

The action of the management of Jharkhand Project of M/s. C.C. Ltd. in confirming the suspension as punishment of Shri Manohar Singh, concerned workman and not paying wages for the said period is not justified. The management is directed to pay the wages for the said period within three months from the date of publication of the award in the Gazette of India.

B. BISWAS, Presiding Officer

नई दिल्ली, 23 मार्च, 2004

का.आ. 957.--औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा०को०लि० के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण II, धनबाद के पंचाट (संदर्भ संख्या 15/1998) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-03-2004 को प्राप्त हुआ था।

[सं. एल-20012/398/92-आई आर(सी.-I)]

एस० एस० गुप्ता, अवर सचिव

New Delhi, the 23rd March, 2004

S.O. 957.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 15/98) of the Central Government Industrial Tribunal/ Labour Court II, Dhanbad now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of B.C.C.L. and their workman, which was received by the Central Government on 19-03-2004.

[No. L-20012/398/92-IR(C-I)]

S.S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL No II, DHANBAD.

In the matter of a reference U/s. 10(1)(d)(2A) of the Industrial Disputes Act, 1947.

Reference No. 15 of 1998

PARTIES : Employers in relation to the management of Ena Colliery of Kustore Area of M/s. BCCL.

AND

Their Workmen.

PRESENT : Shri B. Biswas, Presiding Officer.

APPEARANCES:

For the Employers : Sh. D.K. Verma, Advocate.

For the Workman/ Union : Sh. S.C. Gour, Advocate.

State : Jharkhand Industry : Coal.

Dated, the 6th February, 2004

AWARD

By Order No. L-20012/398/92/I.R. (C-I) dated 20-2-1998 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

> "Whether the demand of the union for regularisation of Sri Nagina Paswan and 39 others (list enclosed) from the management of M/s. BCCL, Kustore Area No. VIII, P.O. Kustore, District Dhanbad is justified? If not, to what relief the workman are entitled ?"

2. The case of the concerned workmen according to the written statement submitted by the sponsoring union on their behalf, in brief, is as follows :

It has been submitted by the sponsoring union that the concerned workmen under the agencies of Friends Shramik Sahayog Samiti Ltd. were engaged by the management of Ena colliery as a Co-operative Society workers for different contract jobs underground, such as, tyndals, miscellaneous, mechanical fitter jobs etc. during the period from 1989 to 1992. Thereafter the management without giving any notice and also assigning any reason stopped them from work. They submitted that the amount paid on account of contract work used to be divided amongst the Society workers. The amount so paid was much less in comparison to the wages paid to the permanent employees doing similar nature of job. The concerned workmen, they disclosed, most of them belong to SC/ST and illiterate for which they had no bargaining power and accordingly they had to accept wages which they were being paid. The management also denied to pay quarterly bonus, annual profit sharing bonus, L.T.C., L.L.T.C. etc. The sponsoring union further submitted that the said Co-operative Society having its registration No. 44 DHAN (Anchal) dated 19-7-1989 took up the cause of these 40 workmen with the management of Kustore Area as well as BCCL Headquarters level for their regularisation and enrolment on permanent roll of the company as the uncertainty of employment had led them to frustration and affected their performance of duties assigned to them. They further submitted that the workmen were actually the workers of the management directly employed by them, but in the year 1989 their services were arbitrarily stopped. They disclosed that in discharging their duties the concerned workmen used to put their attendance in Form 'C' Register of the colliery by the management's Attendance Clerk. They also used to be supplied with Cap Lamps from the Cap Lamp Cabin of the management. Further they disclosed that these workmen put more than 190 days attendance during each calendar year in the underground.

Disclosing all these facts the sponsoring union submitted that inspite of submitting repeated representations the management did not consider necessary to regularise the concerned workmen in the permanent roll and for which they finding no other way raised an industrial dispute before the A.L.C. (C), Dhanbad for conciliation which ultimately resulted reference to this Tribunal for adjudication. The sponsoring union accordingly submitted prayer to pass award directing the management to regularise the concerned workmen in the permanent roll of the company with full back wages.

3. The managment, on the contrary, after filing written statement-cum-rejoinder have denied all the claims and allegations which the sponsoring union asserted in the written statement on behalf of the concerned workmen. They submitted that the sponsoring union by its letter dated 24-1-92 addressed to the A.L.C. (C), Dhanbad, claiming the concerned workmen as share-holders of a Co-operative Society under the name and style of "Friends Shramik Sahayog Samiti Ltd." with its registration No. 42 Dhanbad, dated 19-7-89 and demanded for their regularisation as workmen of the management alleging that they worked as workmen on the contracts awarded by the management to the aforesaid Co-operative Society during the period mentioned above. They disclosed that the sponsoring union asserted that the contract work was awarded to the aforesaid Co-operative Society who were connected with construction of isolation preparatory stopping as well as on transportation of machineries after dismantaling from one place to another for installation. They submitted that the State Government encouraged formation of Co-operative Societies for the purpose of gainful employment as well as for other purpose with the object of assuring contract to them from Public Sector Undertakings as well as from private companies and the intermediaries acting as contractors and not paying proper wages to the workers could not be dispensed with. The aforsaid Co-operative Society was formed with the same object. They disclosed that this Co-operative Society after getting its registration approached the management of Kustore Area for awarding contract job on the basis of work order so that the Society could gainfully engage its members on such jobs to ensure proper income to the members. In response to that approach they awarded contract to the Society on the jobs mainly of civil nature both underground and surface and on some occasions jobs relating to transportation of machineries and store materials as and when required basis. For each such work, work orders used to be issued at the scheduled rates fixed for such jobs by the company. They categorically denied the fact that the jobs are awarded to the Co-operative Society as per work orders were permanent and perennial in nature. On the contrary, they submitted that such contract jobs awarded to the said Society were mostly Temporary, occasional and casual in nature and there is no bar for awarding contract to a Co-operative Society on such jobs. They alleged that the jobs awarded to the aforsaid Co-operative Society were of such nature that not more than 15 persons could be employed at any point of time on any contract job. The Society enrolled hundreds of persons as its members and they have filed several cases and in this case alone they demand for regularisation of 41 workmen making them members of the Society. Accordingly, they categorically denied the claim of the sponsoring union for regularisation of the concerned workmen. They also categorically denied the fact that the workmen were workmen of the management and for which there is no scope at all to consider themselves fit for regularisation like the workmen of the management. In view of all the facts and circumstances the management

submitted prayer to pass award rejecting the claim of the concerned workmen.

Points to be decided :

4. "Whether the demand of the union for regularisation of Sri Nagina Paswan and 39 others (list endclosed) from the management of M/s. BCCL, Kustore Area No. VIII, P.O. Kustore, District Dhanbad is justified? If not, to what relief the workmen are entiltled?"

Finding with reasons :

5. The Sponsoring union in order to substantiate their claim examined one of the concerned workmen as WW-1 while the management also in support of their Claim examined one witness as MW-1.

WW-1 during his evidence disclosed that they worked under the management as tyndals from the year 1989 to 1992 being enagaged by the Co-operative Society named as " Friends Shramik Sahayog Samiti Ltd." This witness further, during his evidence, admitted that they are all members of the said Society and the said Society used to deploy them to work under the management though the management used to supply rnaterials for work. He further disclosed that the management not only used to record their attendance but also used to supply cap lamps and even they used to receive medical facilities. In support of this claim they submitted medical papers marked as Ext. W-1 series. During cross-examination the concerned workman further admitted that it was the Co-operative Society who issued their appointment letters. He also denied the fact that they used to receive their wages from the contractor, i.e. Co-operative Society. He further disclosed that it was the management who engaged them as their employees. On the contrary, MW-1 during his evidence disclosed that in case of any exigency the management used to issue work order in favour of "Friends Shramik Sahayog Samiti Ltd." which was a registered Society for doing the jobs absolutely of temporary in nature. He categorically denied the fact that the management ever awarded any job to the Society to perform which happened to be permanent in nature and also of prohibited category. He further submitted that after completion of the job the management used to pay bill as per work order directly to the Society. He also denied the fact relating to payment of wages to the concerned workmen through management's counter and for which question of issuance of any wage slip never arose. During evidence of this witness the work order which the management relied has been marked as Ext. M-1 series. The copies of bills submitted by the Society for payment in connection with the work done by them had been marked Exts. M-2 to M-2/2. Relating issuance of cap lamps to the workmen this witness said that as per Mines Act no workman is allowed to work in the underground without noting his attendance and also without being equipped with the cap lamps. As the outside cap lamp is prohibited they used to supply the cap lamps to the workmen during their work in the underground along with the implements/articles for work and they used to carry on their work under the supervision of Underground Manager. He also disclosed that in discharging of duties if any workman suffers any injury medical aid is to be provided to them. He also denied the fact that the concerned workmen worked in the underground or on the surface for more than 190 days or 240 days yearly. He also denied the fact that these workmen worked under the management directly and not under the said Co-operative Society. He further submitted that as the said Co-operative Society used to disburse wages to the workmen the question of its supervision by the management never arose.

6. Now, considering the facts disclosed in the pleadings of both sides and also considering the evidence of MW-1 and WW-1 I find no dispute to hold that the "Friends Shramik Sahayog Samiti Ltd.", a registered Co-operative Society under the Co-Operative Societies' Act, was provided with some work under the management on the basis of work order issued by the management. It is the claim of the mamagement that the nature of job which used to be awarded to the said Co-operative Society was mostly civil in nature and for a limited period. WW-1 during his cross-examination categorically admitted that the said Co-operative Society issued appointment letter to them for their work under the management. It has been further admitted by him that they used to work under the management being engaged by their own Co-operative Society. It is the specific contention of the management that as the work order used to issued in favour of the Co-operative Society for doing some work absolutely temporary in nature there was no scope at all to pay wages directly to the concerned workmen from their own counter. No. doubt, WW-1 during his evidence disclosed that they used to receive the wages from the counter of the management. In support of their claim however they failed to produce a single wage slip issued by the management. On the contrary, the management during evidence relied on work orders marked Exts. M-1 to M-1/12 which show that time to time during the period from 1990 to 1991 the management used to offer work as per work orders to "Friends Shramik Sahayog Samiti Ltd.". It is further seen from the documents marked Exts. M-2 to M-2/2 that the said Co-operative Society after completion of work as per work orders submitted their bills to the management for payment. Therefore, there is no dispute to hold that whatever contract was given by the management for taking up some works as per work orders they used to give contract directly to the said Co-operative Society and not to any worker individually. Therefore, here the said Co-operative Society was a direct party and not the

concerned workmen. No evidence is forthcoming to show that the said Co-operative Society was created by the management and in disguise of the said Co-operative Society they used to engage the workmen to carry on certain jobs which were permanent and perennial in nature for the period from 1989 to 1992. Not a single scrap of paper is forthcoming before this Tribunal that the concerned workmen were camouflage worker of the management and they worked under them for more than 190 days in each year in the underground mine. On the contrary, it has been established from the evidence of WW-1 that they formed Co-operative Society and it was the Co-operative Society who used to issue appointment letters for taking up jobs under the management. They claimed that the jobs which they used to perform were perennial and permanent in nature but they have failed to produce any evidence to that effect. As such, it is very much difficult to support the claim of the concerned workmen. It is the contention of the workmen that the Management not only used to note their attendance but also used to issue cap lamps as well instruments for their work in the underground as well as on the surface. Admitting this fact the management submitted that it is mandatory as per Mines Act to note the Hazira of any workman who enters inside the mine. They submitted further that without cap lamp it is not possible for any workman to carry on any work in the underground. As the Society, they disclosed, was entrusted with the contractual jobs according to their specification they used to supply materials for taking up the jobs in question to the workmen. Therefore, the learned Advocate for the management during argument submitted that as the management used to note attendance of the concerned workmen and also as they used to issue cap lamps and equipments for taking their work in the underground it definitely will not justify their claim to the effect that they worked directly under the management, No evidence is also forthcoming in view of the allegations made by the workmen that the said Co-operative Society is sham Society created by the management for exploiting the services of the poor workmen without giving any benefit as well as wages at par with the benefit of wages given to their permanent workmen. In support of this claim onus absolutely rests on the sponsoring union to adduce cogent evidence. But I find no hesitation to say that the sponsoring union in course of hearing have failed to produce a single scrap of paper to show that the concerned workman's services were exploited by the management in the name of the Co-operative Society and the said workmen performed the jobs which were permanent and perennial in nature. In the decision reported in 2001 Lab. I.C. 3656 their Lordships of the Hon'ble Apex Court obeserved that it cannot be said that by virtue of engagement of contract labour by the contract or in any work or in connection with the work of an establishment the relationship of master and servant is created between the principal employer and the contract laborers. It is clear, considering the facts disclosed in the pleadings of both sides as well as evidence of WW-1, that a Co-operative Society was formed with a view to provide employment to the workmen after obtaining contractual jobs by the Society from the management and also from different places. It is seen that this Society time to time used to appoint their workmen to get the work done as per work order issued by the management. Accordingly, it is clear that the concerned workmen were the workmen of the Coperative Society and not of the management. Accordingly, there is no scope to say that being Co-operative Society's workmen as they worked under the management to perform certain jobs as per work orders issued by them they should be considered as the workmen of the management. The question of regularisation in this case comes if it was established that the concerned workmen were engaged actually by the management and under the control of the management they continuously worked for certain years. Here, the instant claim of the concerned workmen is quite a different one. They have claimed their regularisation by the management knowing fully well that they are not the workmen of the management but the workmen of the Co-operative Society.

7. Accordingly, after careful consideration of all the facts and circumstances, I find no hesitation to say that the sponsoring union have failed to establish their claim for which the concerned workmen are not entitled to get any relief in view of their prayer.

8. In the result, the following award is rendered—

The demand of the union for regularisation of Sri Nagina Paswan and 39 others (list enclosed) from the management of M/s BCCL, Kustore Area No. VIII is not justified and accordingly the concerned workmen are not entitled to get any relief.

B. BISWAS, Presiding officer.

ANNEXURE 'X'

1. S/Shri Nagina Paswan	2. Amerika Paswan
3. Anil Kumar Gupta	4. Ramasis Bhuiya
5. Jai Paswan	6. Surender Paswan
7. Ramesh Kumar Gupta	8. Ramanand Paswan
9. Umesh Sah	10. Uma Shanker Jain
11. Ramjanam Paswan (Service)	12. Bhola Dhuiya
13. Conori Bhuiya	14. Daljit Bhuiya
15. Akhlesh Bhuiya	16. Shiv Prakash Tewari

17. Bejrargi Mahato	18. Uma Shanker Pandit
19. Aklesh Yadav	20. Surender Sharma
21. Satynarin Verma	22. Naresh Ram
23. Shyam Dev Ram	24. Ramprabesh Dwivedi
25. Md. Masuk	26. Md. Destagir
27. Md. Rakib	28. Md. Arif
29. Md. Mumtaz	30. Cyas
31. Amka Paswan	32. Prabhu Paswan
33. Mahendra Sharma	34. Santosh Kr. Singh
35. Kailash Paswan	36. Suresh Paswan
37. Chaitram Bhagat	38. Bharat Sethi
39. Mohan Paswan	40. Ram Prasad Gupta

नई दिल्ली, 23 मार्च, 2004

का.आ. 958.--औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा० को० को० लि० के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण II, धनबाद के पंचाट (संदर्भ संख्या 234/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-03-2004 को प्राप्त हुआ था।

[सं. एल-20012/342/2001-आई आर(सी.-I)]

एस० एस० गुप्ता, अवर सचिव

New Delhi, the 23rd March, 2004

S.O. 958.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 234/2001) of the Central Government Industrial Tribunal/Labour Court II Dhanbad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of B. C. C. L. and their workmen, which was received by the Central Government on 19-03-2004.

[No. L-20012/342/2001-IR(C-I)]
S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL NO 2, AT DHANBAD.

PRESENT : Shri B. Biswas, Presiding Officer.

In the matter of an Industrial Dispute u/s. 10(1)(d) of the ID. Act, 1947.

Reference No. 234 of 2001

Parties : Employers in relation to the Management of Sijua Area of M/s. B.C.C.L. and their workman

Appearances :

On behalf of the workman : None

On behalf of the employers : Mr. D.K. Verma, Advocate

State Jharkhand. : Industry : Coal.

Dated, Dhanbad the 4th February, 2004.

AWARD

The Govt. of India, Ministry of Labour in exercise of the powers conferred on them under Section 10 (1) (d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/342/2001 I.R. (C.-I), dated the 19th September, 2001.

SCHEDULE

"Whether the action of the management of BCCL in not regularisation of Shri Naushad Rafi as sick leave clerk is justified ? If not, to what relief is the concerned workman entiltled and from what date ?"

2. In this case neither the concerned workman nor his representative appeared. Subsequently when the case was fixed for exparte evidence of the management, management's representative declined to adduce any evidence and submitted to pass a 'No dispute' Award. It appears from the record that inspite of taking all measures the concerned workman has failed to appear and for which date was fixed for exparte evidence of the manangement. Management too declined to adduce any evidence. Therefore, there is reason to believe that the parties are not interested to proceed with the hearing of this case. Under such circumstances, a 'No dispute' Award is rendered and the instant reference is disposed of on the basis of 'No dispute' Award presuming non-existence of any industrial dispute between the parties, presently.

B. BISWAS, Presiding Officer

नई दिल्ली, 23 मार्च, 2004

का.आ. 959.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार

विजया बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 1, नई दिल्ली के पंचाट (संदर्भ संख्या 134/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-03-2004 को प्राप्त हुआ था।

[सं. एल-12012/36/96-आई आर(बी.-II)]

सी. गंगाधरण, अवर सचिव

New Delhi, the 23rd March, 2004

S.O. 959.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.134/97) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, New Delhi as shown in the Annexure, in the industrial dispute between employers in relation to the management of Vijaya Bank and their workman, which was received by the Central Government on 22-03-2004.

[No. L-12012/36/96-IR(B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, NEW DELHI

I.D. No. 134/97

Presiding Officer : Shri B. N. Pandey

Shri Ish Kumar Pruthi
S/o Shri Jai Ram Dass,
R/o 54, Arya Nagar, Opp. Arya
Nagar Park, Rohtak. ....Workman

Versus

The Dy. General Manager, Vijaya Bank,
IIIrd Floor, Vijaya Building,
17, Bara Khamba Road,
Connaught Place, New Delhi ....Management

AWARD

The Central Government in the Ministry of Labour vode its Order No.L.12012/36/96/IR(B-II) dated 11/12-8-1997 has transferred the following industrial dispute to this Tribunal for adjudication which was pending before the C.G.I.T. Chandigrah :—

"Whether the action of the management of Vijaya Bank, New Delhi in dismissing Shri Ish Kumar Pruthi, Clerk of Vijya Bank, Rohtak Branch is legal and justified ? If not, to what relief the said workman is entitled and from what date?"

2. The workman Shri Ish Kumar Pruthi has prayed for his reinstatment in the service of the respondent Bank with all consequential benefits and full back wages after setting aside his dismissal order dated 9-9-94. In the statement of claim he pleaded that he joined the service of the bank as clerk on 30-4-81 and was working sincerely throughout his long carrier and that on account of his Employees-Union activities he was suspended on 2-7-92. After issuing a charge sheet dated 1-8-92 an enquiry was conducted against him wherein he was found guilty of the charges and ultimately punished vide the dismissal order dated 9-9-94. He further alleged that the departmental enquiry was conducted in hasty manner without following principles of natural justice and according to him proper opportunity of cross-examination was not allowed. He was also not given opportunity to adduce his evidence in defence that the enquiry proceedings suffers from various illegalities and informities and intension of the management was malafide and preplanned from the very beginning. The findings of the enquiry officer was perverse and dismissal order is illegal. Hence, it is liable to be quashed.

3. The claim of the workman was contested by the management by way of filing written statement. It was alleged therein that the enquiry was conducted properly and legally, the conclusion arrived at by enquiry officer and the disciplinary authority was based on the materials on the record and it suffers from no defect; that none of the provisions of the Bipartite Settlement was violated, there was no violation of principles of natural justice. The workman was charge sheeted for the alleged misconduct for leaving the branch office early/reporting late for duty without obtaining prior permission, remaining absent from duty, refusal to receive official communication meant for him, his riotous and disorderly behaviour on the premises of the bank and abusing the branch manager by using vulger words and assaulting the branch manager; that the workman was intentionally absenting and avoiding total enquiry proceeding, therefore, enquiry was concluded exparte on 21-7-93 that on the request of the representative of the workman on 29-7-93 the disciplinary authority ordered to re-open the enquiry;that even then defence representative failed to appear. Hence, the enquiry officer refused to grant further adjournment and rightly concluded the

enquiry on 20-8-93. The enquiry officer submitted his report dated 22-11-93 where in he found the charges 1, 4 and 5 as proved and charge Nos. 2 and 3 as partly proved. The conclusion arrived at by the enquiry officer was just and proper. The enquiry report alongwith the punishment of dismissal was communicated to the workman and he was called upon to submit his representation if any within 7 days of the date of the receipt of the letter; that the workman submitted his representation dated 23-7-94 and requested not to impose the punishment. He was also permitted personal hearing in the matter. He made oral submissions on 23-7-94. After considering the entire facts and submissions, past service records of the workman, the disciplinary Authority passed the order of dismissal which is just and proper and deserves no inference that the enquiry officer was an independent authority and acted independently and impartially and in accordance with law. It is denied that the management concocted a fabricated and false story and issued the charge sheet on false and forged basis. The enquiry was conducted fairly and legally and in accordance with the principles of natural justice. Hence, the petition of the workman deserves to be dismissed.

4. Workman also filed a rejoinder to the written statement of the management reiterating his earlier versions.

5. On the basis of the pleadings of the parties following issues were framed :

1. Whether the domestic enquiry conducted against the workman is fair and proper ?

2. As in the term of reference ?

6. Both the parties adduced their oral as well as documentary evidence.

7. I have heard learned counsels/representatives of both the sides and perused the files.

Issue No. 1

8. Copy of the enquiry proceedings filed on the record shows that the enquiry was fixed on 26-5- 93 when the charge sheeted employee/workman appeared before the enquiry officer at 11.40 AM. On being asked by the enquiry officer the workman told that he had not recieved copy of the charge sheet, therefore, the E.O. directed the presenting officer to give him a copy of charge sheet. The workman also told that he was unable to sit any more because of his illness for which he also submitted a copy of medical certificate and requested to submit its original issued by Dr. Nayyar on a later date. He was given a copy of the charge sheet alongwith other documents. The enquiry was adjourned to 7-6-93. The enquiry was again adjourned on 7-6-93 to 7-7-93 and then to 20-7-93 for various reasons on 20-7-93 the workman was not present. Thereupon the E.O. presumed that the notice sent to the workman might have been served but still he directed to serve one more notice to the workman at his local address for the same day immediately through Mr. Vijay Kumar (Special Messenger) Sub-Staff Rohtak Branch where upon the the presenting officer to the Enquiry Officer that he was of the view that the workman was purposely avoiding the enquiry proceedings and requested that the proceeding should be held exparte. However, the Enquiry Officer deferred the sitting till 1.30 PM same day. At 1.30 PM the E.O. noticed that the notice sent to the workman (Shri Ish Kumar Pruthi) through special messenger was returned undelivered as he was not present at his residence which was recorded in the hand delivery book of the branch and witnessed by Shri Murli Dharan officer and Vijay Kumar Sub-staff and next Staff man who had gone in person to the C.S.E. residence to serve the notice. Thereupon the E.O. asked the P.O. to proceed by calling his first witness for examination and also to submit list of documents. The P.O. submitted various documents and requested the E.O. to exhibit the same. The enquiry proceedings were adjorned for lunch break and ordered to resume at 2.45 PM same day. At 2.45 PM on same day i.e. 20-7-93 the enquiry proceedings resumed and the management examined MW 1, Shri Ram Lal Kardam, MW 2 Shri S.P. Kathpalia. Thereafter the enquiry was adjourned to 21-7-93. On 21-7-93 MW 3 Shri Hari Dass, MW 4 Ch. Mahender Singh, MW 5 Mr. Gajraj Singh and MW 6 Shri Vinod were examined. After examining MW 6 Presenting Officer closed Management's evidence and the proceedings were concluded. The P.O. requested the E.O. to allow him 15 days time to submit his brief which was allowed and the proceedings were adjourned to 5th August, 1993.

9. As sufficient and proper opportunity was not afforded to the workman to cross-examine the witnesses and the enquiry was held, all management's witnesses were examined ex parte in absence of the workman, the disciplinary authority directed the enquiry officer to re-open the case. Thereupon the enquiry resumed on 19-8-93 when in presence of both the parties copy of the proceedings held on 20th and 21st July, 1993 were handed over to the Defence Representative and the Defence Representative was asked by the E.O to give a list of documents and names of defence witnesses if any. On request of the defence representative for time to go through the documents and proceedings held on 20th and 21st July, 1993 E.O. allowed him only one hour time to go through the documents. The P.O. handed over various documents and copy of statement of witnesses. On further request of the Defence Representative the enquiry was adjourned to the morning of the next day i.e. 20th August,

1993 at 9.30 A.M. On 20th August, 1993 the charge sheeted employee told the Enquiry Officer that his Defence Representative had not come as his child health was not well. That he had got that message on telephone at his house. He also told that he would made all possible arrangements to be present in Rohtak before commencement of proceedings. Thereupon the Presenting Officer opposed and stated that all witnesses of management were present, hence to continue the enquiry. However the E.O. gave two hours time to the workman and ordered to recommence the enquiry at 12 Noon. The defence representative could not reach. Hence the E.O. directed the C.S.E. (workman) to cross-examine the witnesses. Thereupon the C.S.E. told that he did not know the proceedings as to how to cross-examine and requested to give some other date. Then he was asked to make some alternative arrangements of any other colleague in the branch to help him (C.S.E.). Despite repeated request of the (C.S.E.), the E.O. did not adjourn the case. He concluded the enquiry same day without cross examination of the management witnesses or affording any more opportunity to the C.S.E. to adduce his defence evidence. The E.O. further allowed 10 days time to the Presenting Officer to submit his brief by 5th of September, 1993. Thereafter the E. O. gave his enquiry report on 22-11-1993. Ultimately the punishment order of dismissal was passed. After perusal of the enquiry proceedings I find that the E.O. did not allow proper and better opportunity to the workman/C.S.E. to cross-examine the witnesses and produce his defence evidence. Documents were also not provided to him well before time despite repeated requests. The E.O. did not allow adjournment on the request of the C.S.E. and even if the proceedings were adjourned it was either for the same day or the next day. It shows that the E.O. was not acting properly, legally and in accordance with the principles of natural justice. Although the E.O. allowed 15 days and 10 days time twice to the P.O. to submit his brief but he did not allow such a long time to the E.O. at any time for the reasons best known to the E.O. It is also worth to be mentioned that despite directions of the disciplinary authority the enquiry proceedings were again concluded within 2 days only on 20-8-93 although enquiry report was given on 22-11-93 i.e. after expiry of more than 3 months from the date of conclusion of the enquiry. It also shows that despite consuming sufficient time in giving his enquiry report the enquiry officer did not allow sufficient time to the C.S.E. to participate in the enquiry, cross-examine the management's witnesses and adduce his own defence evidence. Copy of enquiry report was also not given to the workman.

10. In view of the above discussions I find that the enquiry proceedings were not conducted fairly and properly. The E.O. seems to have been biased from the very beginning. He never allowed proper & sufficient time and opportunity to the C.S.E. to participate in the enquiry proceedings and for cross-examination of the management's witnesses and adduce his own defence evidence which was clearly against the principles of natural justice and has resulted into miscarriage of justice and caused prejudice to the C.S.E. It has, therefore, vitiated the enquiry proceedings. The disciplinary authority and the Appellate Authority did not consider this fact. Hence the enquiry proceedings cannot be justified. Issue No. 1 is, therefore, decided in negative.

11. It is worth to be mentioned that no request has been made by the management to adduce any evidence in support of the charges levelled against the C.S.E., in case the Issue No. 1 is decided in negative. Therefore, I find no justification to give any opportunity to the management to adduce any more evidence to prove charges against the workman.

12. Since the management's evidence was recorded ex parte in absence of the C.S.E./workman without sufficient service of the notice on the C.S.E/workman for the dates 20-7-93 and 21-7-93 when evidence of all the management's witnesses was recorded ex parte. Even after directions of the disciplinary authority the workman was not allowed proper and sufficient time to cross-examine the management's witnesses and adduce his oath defence evidence, therefore, the evidence on the record which was recorded ex parte and which is without a sufficient opportunity to cross-examine the witnesses, cannot be relied upon and made a basis to prove the charges against the workman. I find that the findings recorded by the E.O. are perverse and based on surmises and conjectures. E.O. has acted illegally and against the principles of natural justice and the punishment order passed by the disciplinary authority is, therefore, baseless and without a proper and legal enquiry. The appellate authority has also not considered these infirmities. Therefore, the punishment order cannot be legally sustained.

13. In view of the above I find that the action of the Management of Vijaya Bank, New Delhi in dismissing Shri Ish Kumar Pruthi workman is not legal and justified. Therefore, it deserves to be quashed and the workman is entitled to be reinstated in service with continuity of service, full back wages and all other consequential benefits within a month from the date of publication of the award. Parties shall bear their own costs. Award is given accordingly.

Dated 18-3-2004.

B. N. PANDEY, Presiding Officer

नई दिल्ली, 23 मार्च, 2004

का. आ. 960.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सिंडिकेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, नई दिल्ली के पंचाट (संदर्भ संख्या 67/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-3-2004 को प्राप्त हुआ था।

[सं. एल-12012/119/96-आई.आर.(बी-II)]

सी. गंगाधरण, अवर सचिव

New Delhi, the 23rd March, 2004

S.O. 960.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.67/97) of the Central Government Industrial-Tribunal-cum-Labour Court. No. 2, New Delhi as shown in the annexure in the Industrial Dispute between the employers in relation to the management of Syndicate Bank and their workman, which was received by the Central Government on 22-3-04.

[No. L-12012/119/96-IR (B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

BEFOR THE PRESIDING OFFICER : CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL : CUM-LABOUR COURT-II, RAJENDRA BHAWAN, GROUND FLOOR, RAJENDRA PLACE NEW DELHI

Presiding Officer : R. N. Rai I.D. No. 67/97

In the Matter of :-

Shri Kishan Lal

Versus

Syndicate Bank

AWARD

The Ministry of Labour vide its letter No. L. 12012/ 119/96-IR(B-II) dt. 15-5-1997 has referred the following point for adjudication. The point runs as hereunder:—

"Whether the action of the management of Syndicate Bank in terminating the services of Sh. Kishan Lal Ex.-water boy w.e.f. 16-11-1994 without complying the provision of Sec 25-F of the Industrial Disputes Act, 1947 is legal and justified? If not, to what relief the said workman is entitled to and from what date?"

The claimant has filed statement of claim. He has stated that he was appointed as water boy/peon w.e.f. 11-10-1991. His work and conduct was always satisfactory. He worked continuously from 11-10-1991 to 15-11-1994. On 16-11.1994, he was told verbally that his services stand terminated.

That the Opposite Party has not charge sheeted him. No enquiry has taken place. There was no misconduct on his part. He has completed 240 days service in a calendar year. No compensation was paid. No seniority list was displayed. The action of the Opposite Party was illegal and malafide. The post is still existing. He is fully qualified to hold the post.

The Opposite Party has filed written statement.

In the written statement, the Opposite Party has stated that Shri Kishan Lal was not the workman under Section 2(s) of the Industrial Dispute Act, 1947, so there is no dispute between employee and employer.

It has been further stated that there was scarcity of drinking water at Hapur Branch so his services was taken as water boy. His duty was to fetch water and he was given 30 to 35 rupees per day. His services were purely casual and temporary in narture. There was no contract for service. The daily coolie charges paid to him were debited to contingency account so he is not an employee and he is not able to get any relief under bipartite settlement or awards applicable to the employee. It has been further submitted that the award has been passed dt. 21-3-1989 by CGIT, Kanpur. the Hon'ble Tribunal has held that the petitioner was not doing any job for the bank and he was simply engaged by the bank for drinking water from outside the premises as the claimant under Section 33-0(2) of the ID Act is not maintainable.

The claimant has filed rejoinder.

In his rejoinder, he has denied all the allegations of the written statement and he has stated that he was not simply a water boy but he was peon also and he worked regularly for three years. His services should be terminated after giving him compensation. He has challenged all allegations of the written statement.

Heard agruments from both the sides and perused the documents and record.

It is admitted to both the parties that the workman has worked for 240 days during one caledndar year but he is said to be a water boy and his duty was to fill up the coolers but the coolers are used in summer season only but he has been appointed during the whole year so it cannot be said that he was only engaged for fetching water. The counsel for the workman cited C.A. No. 2161/1987 dated 11-1-1996, it has been held that in case the appellant has worked for 240 days, 25(F) of the I.D. Act is applicable. In 1977(1) SLR Page 199, the same point has been reiterated. In 1989 (1) Page 632, it has been held that if there is continuous service of 240 days, 25(F) is applicable. In 1996 (5) SLR page 817, in this citation also, the period for 240 days has been held material for giving compensation and notice before termination of the services.

From the side of the management, it was argued that he was engaged on casual basis and it would not constitute termination and it does not amount to retrenchment under Section 2(oo) of the I.D.Act. In 1994, AIR Supreme Court 1638, it has been held that if the status of the workman is contributed, he ought to have completed 240 days of work. If there is no sanction post, no right exists. It has been nowhere stated that there was no existing post. So this citation is not applicable.

The workman has filed Photostat copies of the Syndicate Bank which indicates payments and work done by him has also been mentioned. He has not done only the duty of bringing water but payments have been made to him for several other duties. He has performed duties of peon also. These papers have not been denied. He was engaged in Hapur. He has filed the papers of Hapur also and during his posting at Hapur also, worked beside bringing water such as deposit of telephone bills, bringing stationery, depositing electricity bills etc. has been mentioned. This indicates that Shri Kishan Lal was not simply engaged for waterman but the work other than waterman is also taken from him. He has undoubtedly worked for 240 days in one calendar year, Section 25 (F) of the ID Act is attracted. It has been submitted by the workman that the management witness has admitted that the workman has completed 240 days in the employment. Before termination, no witness or notice, pay was given to the workman. Neither any retrenchment compensation was given to him as he was not treated as workman. No agreement for contract service was executed. The bank has not filed original papers regarding the duties of the workman. It was the duty of the management to file the original papers but the bank has not produced the original papers, as such adverse inference will be drawn and the workman Kishan Lal will be treated as water boy cum peon and the should be reinstated with 25% back wages as he was doing the manual work so in the interest of justice, 25% back wages are sufficient.

The point referred to is replied thus:—

The action of the management of Syndicate Bank in terminating the services of Shri Kishan Lal, Ex-water boy w.e.f. 16-11-1994 without complying the provision of Sec. 25-F of the Industrial Disputes Act, 1947 is neither legal nor justified. The workman deserves to be reinstated alongwith 25% back wages.

The Award is given accordingly.

Dated:-17-3-04 R. N. RAI, Presiding Officer

नई दिल्ली, 23 मार्च, 2004

का. आ. 961.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, नई दिल्ली के पंचाट (संदर्भ संख्या 55/93)को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-3-2004 को प्राप्त हुआ था।

[सं. एल-12012/48/93-आई.आर.(बी.-II)]

सी. गंगाधरण, अवर सचिव

New Delhi, the 23rd March, 2004

S.O. 961.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 55/93) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, New Delhi as shown in the annexure in the Industrial Dispute between the employers in relation to the management of Punjab National Bank and their workman, which was received by the Central Government on 22-3-04

[No. L-12012/48/93-IR (B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

BEFOR THE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL: CUM-LABOUR COURT-II, RAJENDRA BHAWAN, GROUND FLOOR, RAJENDRA PLACE NEW DELHI

Presising Officer : R. N. Rai I.D. No. 55/93

In the Matter of :-

Nirmala Devi

Versus

Punjab National Bank

AWARD

The Ministry of Labour vide its letter No. L. 12012/48/93-IR(B-II) Central Government dt. 10-8-1993 has referred the following point for adjudication. The point runs as hereunder:—

"Whether the action of the management of PNB is awarding punishment of recovery of fifty per cent of salary net payable to Smt. Nirmala Devi, Clerk-cum-Cashier starting from August, 1992. Salary net payable till an amount of Rs. 10,000.00 is realized and imposition of warning, is legal and justified. If not, to what relief the workman is entitled to?"

The claimant has filed statement of claim. In the statement of claim, it has been stated that two brothers, namely, Shri Chander Singh, Saving Fund Account No. 8506 and his brother Shri Charan Singh also an

account holder approached the workman for issuance of a new cheque book in the absence of the prescribed Requisition Slip. After taking the approval from the Assistant Manager, she issued the cheque book after verifying the specimen signatures. Soon after, Shri Chander Singh presented cheque No. 493821 dated 24-7-89 for Rs. 10,000/- which was passed by Smt. Nirmala Devi in due course after making due verfication of signatures on the said cheque with those on record. The manager of the concerned branch alleged that she had issued a new cheque under forged signatures against a letter of request and by that forged signatures, Shri Chander Singh has withdrawn Rs. 10,000/-. Thereafter nothing was heard by the workman. The workman has acted in a *bonafide* manner. She was asked to explain the inspection report of the branch. How the cheque was issued and the money was withdrawn. She sent her reply that she had nothing to do with that and a conspiracy has been falsely implicated against the workman. Thereafter the charge sheet was served on her and enquiry was commenced after 8 months. The complainant made a complaint and enquiry was instituted on that complaint. The enquiry is not legal because there was inordinate delay. Principles of natural justice were not followed during the enquiry. The enquiry is vitiated. Rs. 10,000/- cannot be realized from her.

The management has filed written statement.

In the written statement, the management has denied the allegations of the statement of claim. However, it has been admitted that Rs. 10,000/- was withdrawn and on the ground of forged signatures, the cheque was issued by Smt. Nirmala Devi. An enquiry was conducted giving sufficient opportunity to Smt. Nirmala Devi and she participated in the enquiry and she was found guilty and it was ordered that Rs. 10,000/ be recovered from her as the loss was due to her issuing false cheque book and by that false cheque book, the money was withdrawn.

It transpires that the workman did turn up on several dates prior to 2000.

Heard agruments from the side of the management. It was submitted that recovery of Rs. 10,000/- was ordered in view of the proper enquiry held against the workman. She has been afforded full opportunity and the principles of natural justice have heen followed. As such the enquiry is proper and fair and the amount withdrawn is to be recovered from her. The claim has no force.

The reference is replied thus:—

The action of the management of PNB is awarding punishment of recovery of fifty per cent of salary net payable to Smt. Nirmala Devi, Clerk-cum-Cashier starting from August, 1992. Salary net payable till an amount of Rs. 10,000/- is realized and imposition of warning, is legal and justified. The claimant is not entitled to any relief.

The Award is given accordingly.

Dated:-10-3-04 R. N. RAI, Presiding Officer

नई दिल्ली, 23 मार्च, 2004

का. आ. 962.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, नई दिल्ली के पंचाट (संदर्भ संख्या 52/96) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-3-2004 को प्राप्त हुआ था।

[सं. एल-12012/225/95-आई.आर.(बी-II)]

सी. गंगाधरण, अवर सचिव

New Delhi, the 23rd March, 2004

S.O. 962.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 52/96) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, New Delhi as shown in the annexure in the Industrial Dispute between the employers in relation to the management of Punjab National Bank and their workman, which was received by the Central Government on 22-3-04.

[No. L-12012/225/95-IR (B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

BEFORE THE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II RAJENDRA BHAWAN, GROUND FLOOR, RAJENDRA PLACE NEW DELHI

Presiding Officer : R. N. Rai I.D. No. 52/96

In the matter of :—

Narender Kumar

Versus

Punjab National Bank

AWARD

The Ministry of Labour vide its letter No. L. 12012/225/95/IR/B-2 Central Government dt. 22-03-1996 has

referred the following point for adjudication. The point runs are as hereunder:—

"Whether the action of the management of Punjab National Bank, Meerut in terminating the services of Shri Narender Kumar, Sub-Staff posted at Extension Counter, P.N.B, KDB Public School, Ghaziabad w.e.f 12-09-1992 is legal and justified? If not, what relief is the said workman entitled to ?"

The claimant has filed statement of claim. In his statement of claim, it has been stated that the management appointed him on 8-11-1989 as sub-staff in the Extension Counter of the Punjab National Bank at K.D.B Public School, Ghaziabad. No appointment letter was issued to the applicant. The applicant worked for 616 days from 8-11-1989 to 12-09-1992. He was given no appointment letter. The workman has annexed with the statement of claim the days for which he worked. In 1992, he worked for 178 days only as is clear from his own statement.

The management has filed written statement. It has been stated that the dispute has not been duly and properly espoused as envisaged under the provisions of ID Act, 1947 and accordingly no valid dispute can be said to have arisen in the eyes of law. It has been further submitted that he is not a workman under Section 2 (s) of the I.D Act. He was not employed in the bank and no appointment letter was given. He has not worked 240 days during one calendar year but he was employed as casual worker so he is excluded from the operations of Desai Award.

It has been further submitted that a memorandum of settlement was signed on 14-1-1991 between the management of Punjab National Bank and All India Punjab National Employees Federation and during the conciliation proceedings some appointments were made on lump sum basis. No regular employment was made so the case is not covered under the I.D Act. It has been further submitted that Shri Narender Kumar has saving bank account No. 1881 with the bank and he used to come to the branch as a customer and off and on he used to do some cleaning work of the branch intermittently and at times used to bring ice etc. for the branch for which labour charges used to be paid to him.

The workman has filed rejoinder.

In his rejoinder, he has denied the statement of written statement and he has said that his removal amounts to retrenchment and Section 25 F of the I.D Act, 1947 is applicable.

Heard arguments from both the sides and perused the records annexed with the record.

The counsel for the workman said that the workman has filed certain vouchers and those vouchers indicate that he worked as peon in the bank. He was paid Rs. 415/- in his account No. 1881. He deposited Rs. 50/- in cash. He deposited Rs. 5/- in cash. He deposited Rs. 5/- in cash in 1991. He deposited Rs. 10/- as cash in 1991, and Rs 38/- in 1991. Several other letters have been filed but those letters are not legible. From some papers, he has been named as peon but there is no signature of any authority of the bank. These are Photostat copies but these copies do not have any signature of the bank official and these papers have not been admitted.

It was argued from the side of the management that according to his own admission, he did not work for 240 days during the last calendar year. In all he worked for 616 days. In his statement, it has been stated that he worked for 616 days w.e. f 8-11-1989 to 12-09-1992 and in 1992, he worked only from January, 1992 upto September, 1992 but in January he worked for 6 days, in February, he worked for 25 days, in March he worked for 31 days, in April he worked for 30 days, in May, he worked for 31 days, in June, he worked for 30 days, in July, he worked for 7 days, in August, he worked for 6 days, in September he worked for 12 days, and as such he worked for 178 days for the total period during the last calender month. It indicates that whenever there was work, he was called for work but he did not work for 240 days during the calendar year. He has opened his own account in which he deposited cash money. Since the workman has not worked for 240 days during one calendar year, he is not entitled to get the benefit of 25 (F) of the I.D Act. It has been further argued by the bank that the Hon'ble Supreme Court has held in the case of Union of India and others Vs. Bishamber Dutt, (1971 I CLR 190) that no person is entitled to be regularised if the initial appointments were de hors the rules. It is also necessary for him to work for 240 days in one calendar year. In (1997, volume 76 FLR 237) that in case the appointment is not according to the rules, the same cannot be construed as retrenchment under Section 25 (F) of the I.D Act. I have gone through the written arguments of the workman. It has no where been alleged that the workman has worked for 240 days in one calender year during of 1992. He has worked for 6 and 7 days only in some months in 1992. It indicates that whenever there was need of some workman, he was called and work was taken from him. He cannot get the benefit of 25 (F) in as much as he has not completed 240 days during one calendar year. The citations referred to above of the Hon'ble Supreme Court are fully applicable in the facts and circumstances of the case. The workman is not entitled to any relief.

The workman has himself admitted in his affidavit "that the deponent was performing duties of sub-ordinates staff due to the vacancy of Sh. Mohinder Singh, peon in whose place, the branch was not having any strength. He has further admitted that his name was never entered in the attendance register. He was not a member of any union. This indicates that he was working at the place of Sh. Mohinder Singh as he was on leave. He was working on leave vacancy according to his own admission. The attendance sheet filed by him appears to be forged.

The reference is replied thus :—

The action of the management of Punjab National Bank, Meerut in terminating the services of Shri Narender Kumar, Sub-Staff posted at Extension Counter, Punjab National Bank, KDB Public School, Ghaziabad w.e.f 12-09-1992 is legal and justified. The workman is entitled to no relief as asked for. The award is given accordingly.

Dated : 09-03-2004 R.N. RAI, Presiding Officer

नई दिल्ली, 23 मार्च, 2004

का. आ. 963.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.2, नई दिल्ली के पंचाट (संदर्भ संख्या 101/2000)को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-3 2004 को प्राप्त हुआ था।

[सं. एल-12013/11/1998-आई.आर.(बी-II)]

सी. गंगाधरण, अवर सचिव

New Delhi, the 23rd March, 2004

S.O. 983.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 101/2000) of the Central Government Industrial Tribunal-cum-Labour Court, New Delhi No. II as shown in the Annexure in the Industrial Dispute between the management of Punjab National Bank and their workmen, received by the Central Government on 22-03-2004

[No. L-12013/11/1998-IR (B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

BEFORE THE PRESIDING OFFICER : CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, RAJENDRA BHAWAN, GROUND FLOOR, RAJENDRA PLACE, NEW DELHI

Presiding Officer : R. N. Rai I.D. No. 101/2000

In the Matter of :—

P. N. B KARAMCHARI UNION, DELHI

Versus

PUNJAB NATIONAL BANK MANAGEMENT AND OTHERS

AWARD

The Ministry of Labour vide its letter No. L-12013/11/98-IR (B-II) Central Government dt. 24-04-1998 has referred the following point for adjudication. The point runs is as hereunder:—

"Whether the action of the management of Punjab National Bank in dismissing Shri Nand Lal Goel w.e.f 4-12-1992 is legal and justified ? If not, to what relief the said workman is entitled?"

The applicant has filed statement of claim. In his statement of claim it has been stated that the so called reference by the Ministry of Labour, New Delhi is illegal, bad, false in law in response of the following Preliminary Objections.

It is fact that no industrial dispute was raised by the Union on 15-09-1997 before the A.L.C-H.Q. except to file a complaint Under Sections 25T and 32 of the I.C Act within his own mandatory duties to enforce the rights of Shri Nand Lal Goel and it is accepted by the bank management in its reply.

That after persual of all facts and documents, ALC-II settled the claims of Shri Nand Lal Goel as per I.D Act, rulings and mandatory duties vide its letter dated 23-10-1993, 29-2-1996, 11-2-1998 and 13-4-1999, Shri Nand Lal Goel reported to the bank to allow duties and payment of all back wages etc. on 19-09-1998 but the bank did not do so, so the matter was referred under the Industrial Tribunal.

The bank in its reply has stated that the service conditions are governed by the provisions of Sastry Award, Desai Award and various Bipartite settlements. Shri Nand Lal Goel was placed under suspension by the Sr. Manager under the instructions of the Regional Manager, North Delhi Region. He was served with the charge-sheet. Shri Goel was earlier also served with the charge dated 25-01-1991 for unauthorized absence and also charge sheet dt.29-1-1991 for acts of insubordination.

It is further submitted that Shri Goel submitted the reply to the charges and enquiry was held. Charge sheet was served upon him. The enquiry was conducted by the Enquiry Officer but Shri Nand Lal Goel did not turn up before the Enquiry Officer despite service of the notice. The Disciplinary Authority vide show cause notice dated 09-10-1992 proposed punishment of dismissal upon Shri Goel and he was also advised to appear for the personal hearing before the Disciplinary Authority on 23-10-1992 at 11.00 AM. Shri Goel, however, did not avail himself of this opportunity of personal hearing and the Disciplinary Authority in order to afford him yet another opportunity,

vide notice dt. 5-11-1992 advised him to appear for the personal hearing on 20-11-1992 and in case he did not turn up on the date and venue fixed, no further opportunity will be given to him and the punishment proposed shall be confirmed. He did not turn up so his dismissal was confirmed. All the allegations of his claim are incorrect.

I have gone through the order sheet and it is apparent from the order itself that the workman is not turning up since 20-12-1999. At least he is not appearing before the Court for over four years. He has been represented by the union. None is turning up from the side of the union.

Heard arguments from the side of the management. Since the workman or the union are not turning up for almost four years, there is no question of giving notice to the workman who is absent from over four years. The learned counsel for the management argued that he did not participate in the enquiry. The chargesheet was served on him and notice of every date was served on him but he deliberately avoided the enquiry. At least he was found guilty. His dismissal was proposed and again notice was sent for hearing regarding punishment. He did not turn up, as such the proposal for dismissal was confirmed and he was dismissed from service w.e.f. 4-12-1992. He remained silent for 8 years and filed this ID in 1992 since the workman is not taking interest and he has not participated in the enquiry. The enquiry shall be deemed to have been conducted according to the principles of natural justice.

The award is replied thus:—

The action of the management of Punjab National Bank in dismissing Shri Nand Lal Goel w.e.f 4-12-1992 is legal and justified. The workman is not entitled to any relief as asked for.

The award is given accordingly.

R.N. RAI, Presiding Officer

Dated:-09-03-2004.

नई दिल्ली, 23 मार्च, 2004

का. आ. 964.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूको बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 28/2002)को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-3-2004 को प्राप्त हुआ था।

[सं. एल-12011/195/2001-आई.आर.(बी-II)]

सी. गंगाधरण, अवर सचिव

New Delhi, the 23rd March, 2004

S.O. 964.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 28/2002) of the Central Government Industrial-Tribunal-cum-Labour Court No. 2 Dhanbad as shown in the annexure in the Industrial Dispute between the employers in relation to the management of UCO Bank and their workmen, which was received by the Central Government on 22-03-2004

[No. L-12011/195/2001-IR (B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL: No.2, DHANBAD

Ref. No. 28/2002

Dated, 24th February, 2004

CORRIGENDUM

Record is put up for order. Perused one petition filed on behalf of the management with a prayer for rectification of the award arising out of typographical mistake passed in reference No. 28 of 2002. From the Award it transpires that the "No Dispute Award" in the instant case was passed in view of the petition filed by Shri P.K. Chatterjee, Senior Law Officer on behalf of the management. Actually the petition for passing "No Dispute Award" was filed by shri B. Prasad, State Secretary, UCO Bank Employees Association. Due to inadvertant mistake instead of mentioning the fact that "No Dispute Award" was passed in view of the petition filed by the representative of the workman it was written that "No Dispute Award" was passed in view of a petition filed on behalf of the management. As that mistake is inadvertant in nature its rectification will not effect the award itself in any circumstances and also as representative of the concerned workmen did not raise any objection when the instant petition was taken up for hearing. I consider in the interest of justice to rectify the award passed by this Tribunal dated 20-11-2003 to remove the anomaly.

2. The award is to be rectified as follows:

In the 2nd line of the Award instead of "Mr. P.K Chatterjee, Senior Law Officer on behalf of the managment" will be written and read as "Mr. B.Prasad, State Secretary, UCO Bank Employees Association, being the representative of the workman".

In the 5th line instead of "reinstate" it will be written and read as "regularise".

In the 7th line instead of "representative of the management" it will be written and read as "representative of the concerned workman". Again in the 8th line instead of "concerned workman" it will be written and read as "management".

Copy of the original Award is enclosed for ready reference.

B. BISWAS, Presiding Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL : (No. 2), AT DHANBAD

Present : Shri B. Biswas
Presiding Officer.

In the matter of an Industrial Dispute under Section 10 (1) (d) of the I.D. Act, 1947.

Reference No. 28 of 2002

PARTIES	:	Employers in relation to the management of UCO Bank and their workman.
APPEARANCES	:	
On behalf of the Workman	:	Mr. B. Prasad, State Secretary, UCO Bank Employees Association.
On behalf of the Empoyers	:	Mr. P. K. Chatterjee, Senior Law Officer, Regional Office.

State : Jharkhand Industry : Banking

Dated, Dhanbad, the 20th November, 2003

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-12011/195/2001 IR(B-III) dated 11-3-2002.

"Whether the action of the management of UCO Bank, Kankarbagh Branch, Patna in not regularising Shri Anil Kumar, Peon is justified? If not, what relief the workman is entitled to ?

2. In course of hearing of the instant dispute Mr. P. K. Chatterjee, Senior Law Officer on behalf of the management by filing a petition submitted his prayer to pass a 'No dispute' Award in this case, as the management has directed to reinstate the concerned workman as per Panel prepared by them. In view of the submission made by the representative of the management, the representative of the concerned workman expressed his unwillingness to proceed with the hearing of the instant dispute. As the dispute in question has already been settled as per penal and prepared by the management there is no reason to proceed further with the case. Under such circumstances, as 'No dispute' Award is rendered and the reference is disposed of on the basis of 'No dispute' Award presuming non-existence of any industrial dispute between the parties.

B. BISWAS, Presiding Officer

नई दिल्ली, 23 मार्च, 2004

का. आ. 965.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै. मोहब्बताबाद सिलिका सेण्ड माईन्स के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली-1 के पंचाट (संदर्भ संख्या 57/2002)को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-3-2004 को प्राप्त हुआ था।

[सं. एल-29012/1/2002-आई.आर.(विविध)]

बी. एम. डेविड, अवर सचिव

New Delhi, the 23rd March, 2004

S.O. 965.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.57/2002) of the Central Government Industrial Tribunal-cum-Labour Court, New Delhi - 1as shown in the annexure in the Industrial Dispute between the employers in relation to the management of M/s. Mohabatabad Silica sand Mines and their workmen, received by the Central Government on 22-3-2004

[No. L-29012/1/2002-IR (M)]

B.M. DAVID, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT : NEW DELHI

PRESIDING OFFICER : SHRI B.N. PANDEY

I. D. NO. 57/2002

Shri Vinod Kumar S/o
Shri Visheshwar Nath Sharma,
C/o Shri S.C. Tiwari,
Gali No. 15, House No. 282,
Bhikam Colony, Ballabhgarh, ... Workman

Versus

M/s. Mohabatabad Silica Sand Mines,
Through its proprietor Shri Ram
Chander Bainda, House No. 1492,
Sector 14, Fridabad (Haryana) ...Management

AWARD

The Central Government in the Ministry of Labour vide its Order No.L.29012/1/2002 -IR(M) dated 16-7-2002 has referred the following industrial dispute to the this Tribunal for adjudication:

"Whether the action of the management of M/s. Mohabatabad Silica Sand Mine Faridabad in terminating services of Shri Vinod Kumar Machine/Mistry w.e.f. 02-11-2000 is just and legal ? If not, to what relief workman is entitled to ?"

2. The claimant/workman Vinod Kumar has assailed the termination order of the management dated 2-11-2000.

terminanting his services and prayed for his reinstatement with full back wages, continuity in service and with all consequential benefits. In his claim statement he has alleged that he was employed with the Management respondent as Mechanic/Mistry (Diesel) w.e.f. 15-3-93. However, he was not given any appointment letter. He was issued an identity card and his salary was paid through vouchers. His services were terminated verbally on 2-11-2002. No reason for termination of his services was assigned. He was also not given any retrenchment allowance under section 25-F of the I.D. Act nor any domestic enquiry was conducted. On raising dispute by him the appropriate government referred the dispute for adjudication to this Court; that the termination order is absolutely illegal and violative of the mandatory provisions of the I.D. Act.

3. The claim of the workman has been contested by the management by way of filing a written statement and in the written statement it has been *inter alia* alleged that the mine of the management was closed by order dated 6-5-2002 of the Hon'ble Supreme Court in I.A. No. 1785, I.A. No. 22 and 129 in writ petition (Civil) No. 4677/1985 w.e.f. 8-5-2002; that it is a settled law that the Industrial Disputes Act applies to an existing and not a dead Industry. That the object of all labour legislation is to ensure fair wages and to prevent disputes so that production might not be adversely affacted; that the present reference is *ultra vires* and bad in law; that the reference is beyond the jurisdiction of this court; that the reference order was passed on 16-7-2002 when the mine was already closed by virtue of Supreme Court order. As a matter of record service of the workman was terminated through a Written order of the management consequent to the disciplinary proceedings and fair and proper domestic enquiry w.e.f. 18-9-2001. Hence reference made by the government is bad in law and vague; that Shri Vinod Kumar workman has been deliberately absenting from duty w.e.f. 2-11-2000 having no explanation and not reporting on duty. Hence domestic enquiry was held. Ample opportunity was given by the enquiry officer to the workman to put up his defence, Shri S.K. Singh was appointed enquiry officer. Vinod Kumar did not appear before the enquiry officer despite notices. Hence domestic enquiry was completed and ultimately services of the workman were terminated. That to the best of knowledge of the management the workman has been gainfully employed elsewhere since the time he deliberately absented himself from duty. That there was no illegality in termination order or enquiry proceedings.

4. Rejoinder was also filed by the workman against the Written statement denying the allegations made in the W.S. and reiterating his earlier versions. He also denied that he had been deliberately absenting from duty w.e.f. 2-11-2000. However, it was admitted that the Mine has been closed down by the order of the Hon'ble Supreme Court.

5. Both the parties have filed various documents in support of their case. The preliminary question was raised by the management that the case was not maintainable as the concerned mine has been closed down under orders of the Hon'ble Supreme Court. Hence the mine has become dead 'Industry'. Therefore, the present dispute under the I.D. Act, 1947 is not maintainable.

6. Both the parties were heard on the ground of maintainability of the case. I have also persued the file. Admittedly the respondent management mine was closed w.e.f. 8-5-2002 under the orders of the Hon'ble Supreme Court dated 6-5-2002. The Managment has also filed a copy of order of District Magistrate Faridabad (Annexure A) which runs as under :

> "Compliance of the Hon'ble Supreme Court of India order dated 06-05-2002 in writ petition (civil) No. 4677 of 1985 in the matter of M.C. Mehta Vs. Union of India and others.
>
> As per the orders (enclosed) of the Hon'ble Supreme Court dated 06-05-2002, you are directed to stop all mining operations and pumping of ground water from 10AM sharp from tomorrow *i.e.* 08-05-2002 without fail. In case of violation you will be liable for legal action."

7. The management has also filed a photostat copy of I, LLJ 1957 Supreme Court page 253 (Annexure B) which shows that in a case between Banaras Ice Factory Ltd. Vs. Their Workmen Five Judges Bench of the Hon'ble Supreme Court of India held that :

> "The provisions of the Industrial Disputes Act apply to an existing 'Industry' and not to a dead 'Industry'. 8—In the instant case the reference order of the Appropriate Government was dated 16-7-2002 whereas the 'Industry' was admittedly closed w.e.f. 8-5-2002 under orders dated 6-5-2002 of the Hon'ble Supreme Court which is much before the reference order. Since the 'Industry' was already closed much before the reference order the provisions of the Industrial Disputes Act could not be applied in the instant case. I, therefore, hold that the present Dispute is not maintainable and accordingly liable to be dismissed. The award is given accordingly.

B. N. PANDEY, Presiding Officer

नई दिल्ली, 23 मार्च, 2004

का. आ. 966.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै. मोहब्बताबाद सिलिका सेण्ड माईंस के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नई दिल्ली के पंचाट (संदर्भ संख्या 56/2002 व 86/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-3-2004 को प्राप्त हुआ था।

[सं. एल-29012/5/2002-आईआर(विविध)]

[सं. एल-29012/12/2002-आईआर(विविध)]

बी. एम. डेविड, अवर सचिव

New Delhi, the 23rd March, 2004

S.O. 966.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.56/2002 & 86/2002) of the Central Government Indusrial-Tribunal-cum-Labour Court. New Delhi-1 as shown in the annexure in the Industrial Dispute between the employers in relation to the management of M/s Mohabatabad Silica Sand Mines and their workman, which was received by the Central Government on 22-3-04

[No. L-29012/5/2002-IR (M)]

[No. L-29012/12/2002-IR (M)]

B. M. DAVID, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT NEW DELHI

Presiding Officer : Shri B. N. Pandey

I. D. No. 56/2002

Shri Mani Lal Singh,
S/o Shri Baij Nath Singh,
C/o Shri Kant Singh,
A-47, Royal Villa, Room No. 202,
Shalimar Garden Extension-II,
P. O. Sahibabad, Distt.
Ghaziabad (U.P.) Claimant/Workman

Versus

M/s Mohabatabad Silica Sand Mines,
1492/14, Faridabad (Haryana)
Management/Respondent

AND

I. D. No. 86/2002

Shri Ravinder Chander Mishra,
S/o Late Shri Shiv Sagar Mishra,
V. & P.O. Pararia, Thane-Nawatta,
Distt. Rohtas (Bihar)
C/o President,
Haryana Khadan Mazdoor Union,
Jain Dera, Suraj Kund,
Haryana, Faridabad Claimant/Workman

Versus

M/s Mohabatabad Silica Sand Mines,
House No. 1492/14, Faridabad (Haryana)
Respondent/Management

AWARD

Both the above mentioned disputes are against the same management and are of similar nature based on similar facts. Therefore, they are taken together and are being disposed of by this common award which shall govern both of them.

2. In I. D. No. 56/2002 the Central Government in its Ministry of Labour vide Order No. L-29012/5/2002 (IR)(M) dated 16-7-2002 has referred the following industrial dispute to this Tribunal for adjudication :—

"Whether the action of the management of M/s Mohabatabad Silica Sand Miners, Faridabad in terminating the services of Shri Mani Lal Singh Mining w.e.f. 2-9-2000 is just and legal? If not, to what relief the workman is entitled?"

AND

In I. D. No. 86/2002 the Central Government in its Ministry of Labour vide Order No. L-29012/12/2002 IR (M) dated 21-10-2002 has referred the following industrial dispute to this Tribunal for adjudication :—

"Whether the action of the management of M/s Mohabatabad Silica Sand Miners, Faridabad in terminating the services of Shri Ravinder Chander Mishra w.e.f. 3-9-2000 is just and legal? If not, to what relief the workman is entitled to?"

3. In I. D. No. 56/2002 the workman Mani Lal has claimed that he was appointed by the respondent management as Mining Mate on 9-6-92. He worked there upto 1-9-2000 but on the same day he was informed by Shri S. K. Ghosh Foreman that the Company has terminated his services forever; that no reason was assigned for termination of his services; that the mandatory provisions of the I.D. Act, 1947 were not complied with at the time of termination of his services, principles of natural justice were violated; that the workman was not paid any amount in lieu of notice or retrenchment compensation etc.; that the termination order was absolutely illegal and liable to be quashed. Hence he has claimed his reinstatement in service with continuity, full back wages and all other benefits.

4. I.D. No. 86/2002 the workman has assailed termination order dated 3-9-2000 of the management-respondent terminating his services and prayed reinstatement with continuity in service, full back wags and all other consequential benefits. In his claim statement he has alleged that he was appointed as Mining Mate on 28-6-91 and was promoted as Mine Foreman on 9-3-95 that on 3-9-2000 he was told by the Foreman that his services were terminated by the Management forever; that no reason was assigned at all that he had worked regularly for about 10 years but no notice nor any amount in lieu thereof or any compensation was paid to him. Termination of his services is absolutely illegal, null and void abinitio and liable to be set aside; That his juniors were retained and mandatory provisions of law in terminating his services were not followed. Hence termination order is liable to be quashed.

5. The management filed its written statement in both the cases separately and on almost similar grounds. It has denied the claim of the workman and interalia alleged that the management respondent owned Mohabatabad Silica Sand Mines within an area of 5 KMs from the Delhi Haryana Border which was closed by the order dated 6-5-2002 of the Hon'ble Supreme Court in Civil Writ Petition No. 4677/1985 w.e.f. 8-5-2002; that it is a settled law that the Industrial Disputes Act applies to an existing and not to a dead Industry. Reliance has been placed on the various laws of the Hon'ble Supreme Court which have also been cited. It was further alleged that the reference is ultra vires and not maintainable; that as a matter of fact services of Shri Mani Lal Singh were terminated w.e.f. 18-9-01 consequent to an enquiry conducted against him for deliberate absence w.e.f. 2-9-2000; that the enquiry held was legal and proper. As against Ravinder Chander Mishra workman of I.D. No. 86/2002 it has been alleged that the workman was not at all interested in service but in full and final payment as he had given a demand notice that Shri Mishra had proceeded on a long leave in mid of August, 2000 because of his pending dispute of land in his native place; that the services of Shri Mishra were terminated w.e.f. 18-9-2001 consequent upon enquiry for his deliberate absence w.e.f. 11-9-2000; that the enquiries held against both the workman were legal, proper and in accordance with law and principles of natural justice; that the termination order was based on domestic enquiry; that there is no merit in the allegations of the workman and their claim is liable to be dismissed. It has been further prayed that the preliminary objection may be disposed of first to save the invaluable time of this Hon'ble Court. The Management has also filed various papers and copies of case laws.

6. On the request of the management to decide the question of maintainability first a date was fixed for hearing on the ground of maintainability but both the workmen absented themselves on that date i.e. 19-2-04. Therefore, arguments of the management's representative on the ground of maintainability was heard. I have also perused the file. Admittedly the respondent management mine was closed w.e.f. 8-5-2002. The Management has also filed a copy of order of District Magistrate Faridabad (Annexure A) which runs as under :—

> "Compliance of the Hon'ble Supreme Court of India Order dated 6-5-2002 in writ petition (Civil) No. 4677 of 1985 in the matter of M.C. Mishra Vs. Union of India and others.
>
> As per the orders (enclosed) of the Hon'ble Supreme Court dated 6-5-2002, you are directed to stop all mining operations and pumping of grond water from 10 AM sharp from tomorrow i.e. 8-5-2002 without fail. In case of violation you will be liable for legal action."

7. The management has also filed a photostat copy of I, LLJ 1957 Supreme Court page 253 (Annexure B) which shows that in a case between Banaras Ice Factory Ltd. Vs. Their workmen Five Judges Bench of the Hon'ble Supreme Court of India held that :—

> "The provisions of the Industrial Disputes Act apply to an existing 'Industry' and not to a dead 'Industry'."

8. In the instant case the reference order of the Appropriate Government was dated 16-7-2002 and 21-10-2002 respectively whereas the 'Industry' was admittedly closed w.e.f. 8-5-2002 under orders dated 6-5-2002 of the Hon'ble Supreme Court which is much before the reference order. Since the 'Industry' was already closed much before the reference order the provisions of the Industrial Disputes Act could not be applied in the instant case. I, therefore, hold that the present dispute is not maintainable and accordingly liable to be dismissed. The award is given accordingly.

9. A copy of this Award be kept on the file of I.D. No. 86/2002, Original being placed on the file of I.D.No.56/2002.

Dated : 16-3-2004 B. N. PANDEY, Presiding Officer

नई दिल्ली, 23 मार्च, 2004

का. आ. 967.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इण्डियन ऑयल कार्पो. लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नई दिल्ली-1 के पंचाट (संदर्भ संख्या 91/91) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-3-2004 को प्राप्त हुआ था।

[सं. एल-30012/23/91-आई.आर.(विविध)]

बी. एम. डेविड, अवर सचिव

New Delhi, the 23rd March, 2004

S.O. 967.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.91/91) of the Central Government Indusrial-Tribunal-cum-Labour Court. New Delhi-1 as shown in the annexure in the Industrial Dispute between the employers in relation to the management of Indian Oil Corporation Ltd. and their workman, which was received by the Central Government on 22-3-2004

[No. L-30012/23/91-IR (M)]

B. M. DAVID, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NEW DELHI

Presiding Officer : Shri B. N. Pandey

I. D. No. 91/91

Shri Mahender Singh Dixit,
Technician Gr. II,
R & P Division, Mathura Refinery, Mathura
R/o B-89, Indupuram Colony,
(Behind Narula Nursing Home),
Orangabad Mathura,
Through-Working President-Mathura
Refinery Mazdoor Sangh ...Workman

Versus

Executive Director,
Mathura Refinery,
Indian Oil Corporation Ltd.,
Mathura. ...Management

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-30012/23/91-I.R. (vividh) dated 24-7-91 has referred the following industrial dispute to this Tribunal for adjudication :—

"Whether Chief Power & Utilities Manager, Mathura Refinery of I.O.C. Ltd. was justified in imposing the penalty of reduction in rank to Shri Mahendera Singh Dixit from Techn. II to Techn. III w.e.f. 16-7-90, If not, to what relief the workman is entitled to?"

2. The workman has challenged validity of Management's order imposing the penalty of reduction in rank from Techn. II to Techn. III w.e.f. 16-7-90 and has prayed to quash the same and restore his previous position in service. In the claim statement he has alleged that he was working as Techn. Gr. II in Mathura Refinery Indian Oil Corporation, Mathura; that his work and conduct has always been satisfactory and there was no complaint at all against him; that on 12-9-89 he was given a false, fabricated and misconceived charge sheet regarding an alleged incident dated 12-9-89; that the Charges were that "It was reported that at about 10.30 A.M. on 10-9-89 near Pump House No. 81 your scooter No. USO 9379 caught fire. The probable cause of the fire appears to the spark generated while starting the scooter when the petrol was spilled over the body of the scooter, and that this is likely to happen when there has been an attempt to fill the tank with the pilferred petrol from nearly source. The said fire, if would not have been controlled in time, could have led to very serious consequences including destruction of the plant and machinery resulting into huge lose to the Corporation in terms of men and money and that the alleged act on the part of the workman as detailed above being of extremely serious and grave nature calls for immediate action against him. Therefore, he was thereby suspended with immediate effect pending enquiry. It was further alleged that the said act of the workman constitute misconduct in terms of clause 3 (b) (c) and (d) of the Model Standing Orders applicable to him." The workman emphatically denied the charges vide its reply dated 20-9-89. The management proceeded with domestic enquiry against the workman and appointed Shri H.P. Singh, Process Manager as the Enquiry Officer who finally gave his report on 25-7-1990; that before supplying a copy of the enquiry report, management already imposed punishment of reduction in rank from Techn. Gr. II to Techn. Gr. III in the scale of Rs. 1225-2465; that the copy of the enquiry report was not supplied to him, he was deprived of his valuable and important right to make representation on the findings of the enquiry officer before imposition of the impugned punishment. That the findings are totally perverse and baseless and biased; that the Disciplinary Authority as well as Appellate Authority to impose punishment did not consider the position and various factors and submissions made by the workman. It was, therefore, prayed that the disciplinary proceedings be held to be invalid and illegal quashed and the punishment awarded to the workman be set aside.

3. The claim of the workman has been contested by the management by way of filing a written statement denying his claim statement. It was further alleged that the enquiry was conducted in very fair and proper manner in accordance with the principles of natural justice, standing orders and law. That there was no illegality in conducting the enquiry proceeding that the findings and conclusions of the enquiry officer was lawful, just fair and logical; that the disciplinary authority awarded the punishment after considering the entire facts and circumstances of the case and the appeal filed by the workman was also dismissed. There was no illegality in domestic enquiry. Hence the workman is entitled to get no relief and his petition deserves to be dismissed.

4. The workman also filed his rejoinder to the written statement of the respondent denying the allegations made in the written statement and reiterating his earlier versions.

5. On the pleadings of the parties following issues were framed :

1. Whether the domestic enquiry conducted against the workman is fair and proper ?

2. As in terms of reference.

6. In support of their case both the parties filed various documents and affidavits of witnesses. Witnesses were also cross-examined by the respectlve opposite parties/sides.

7. Heard the ld. representatives of both the sides and pursued the file.

8. Admittedly at about 10.30 AM on 10-9-89 near Petrol Pump House No. 81 workman's scooter No. USO 9379 caught fire due to spark generated while starting the scooter. It is alleged that at the said date time and place when the workman was going on his scooter the scooter automatically stopped and while the workman was attempting to start it, it caught fire. There was no eye witness of the incident. According to the workman it was merely an accident for no fault of his own but the management suspected that it was likely to happen when there has been an attempt to fill the tank with pilfered petrol from nearby source. Thus the entire allegation of the management regarding pilfering petrol was based on more suspicion and there was no evidence at all to that effect against the workman. The management levelled the charges alleging that pilfering of petrol as a result of which the petrol had spilled over the body of the scooter, the scooter caught fire while attempting to start, it amounts to a misconduct in terms of clause 3(b), (c) and (i) of the Model Standing Orders. Thus the entire enquiry proceedings were based merely on suspicion and presumptions. There was no eye witness that all to prove the pilfering of petrol by the workman through a nearby source nor any witness was named in the charge sheet to support the version. No doubt the charge sheet was given which was also replied. The charges were denied but the enquiry was conducted to merely complete the formalities to punish the workman on false charges. It is clear that from the very beginning from the stage of initiating the enquiry proceedings the management was biased against the workman. There is nothing in evidence on the record to show that at the time of incident plying of vehicles was prohibited in that area. The incident was reported by the workman himself. MW1 Shri K.L. Malhotra Manager in his cross-examination before this court admitted that he had not seen the spil over of the petrol there. He also admitted that he had not seen the accident but was informed about it later on. On perusal of the file, considering facts and circumstances of the case I find that it was merely an accident of fire. There was no evidence against the workman that he had pilfered petrol or had acted negligently or against any administrative order of the management. There was also no evidence against the workman that he had acted negligently or any loss was caused to the management. Therefore, the entire enquiry was unwarranted and uncalled for. It was an arbitrary act of the management. The enquiry officer as well as Disciplinary Authority and the Appellate Authority did not consider this aspect of the case, found the workman guilty of baseless charges and awarded the punishment. The findings of the enquiry officer was also perverse and arbitrary and based on surmises and conjectures. Therefore, the enquiry proceedings cannot be said to be fair and proper. Issue No. 1 is accordingly decided in negative.

9. No prayer has been made on behalf of the management to adduce any more evidence before this Tribunal in support of the alleged charges. Therefore, I find no justification to give any opportunity to the management to adduce any further evidence before this court.

10. After considering the entire facts, evidence and circumstances of the case I find that the enquiry was initiated and conducted arbitrarily on the basis of mere suspicion. It is well settled that no charge can be proved merely on the basis of suspicion without any cogent evidence. Therefore, the action of the management of Mathura Refinery in imposing penalty of reduction in rank of Shri Mahender Singh Dixit workman from Technician II to Technician III w.e.f. 16-7-90 cannot be justified and legally sustained. Therefore, it deserves to be quashed and consequently workman is entitled to get the relief prayed in his claim statement. The workman deserves to be restored on his previous post as Technician II from the post of Technician III and get all consequential benefits including the difference of Pay from the date when his position/grade was reduced on the basis of the punishment order within 30 days from the date of publication of award. In the circumstances of the case both the parties shall bear their own costs. Award is given accordingly.

Dated : 18-3-2004 B.N. PANDEY, Presiding Officer

नई दिल्ली, 25 मार्च, 2004

का. आ. 968.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार साऊथ इंडियन बैंक लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, पालाकाड के पंचाट [संदर्भ संख्या आई. डी. 28/2002(सी)]

को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-3-2004 को प्राप्त हुआ था।

[सं. एल-12012/456/2001-आई.आर.(बी-I)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 25th March, 2004

S.O. 968.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award [Ref. No. I.D. 28/2002(C)] of the Industrial Tribunal, Palakkad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the South Indian Bank Ltd. and their workman, which was received by the Central Government on 24-3-2004

[No. L-12012/456/2001-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

IN THE COURT OF THE INDUSTRIAL TRIBUNAL, PALAKKAD

(Friday, the 5th March, 2004/15th Phalguna 1925)

PRESENT :

Sri. B. Ranjit Kumar
Industrial Tribunal

Industrial Dispute No. 28/02(C)

BETWEEN

The Chairman, The South Indian Bank Ltd., Head Office, Thrissur (Kerala), 683 101.

(By Adv. M. Venugopalan)

And

Shri P. J. Antony, 55, L. Poopadi House, Sivagami Nagar, Thankakkulam P.O.-Madurai, Tamil Nadu-625 006 (Tamil Nadu).

(By Adv. Sreekumar Puthezhath)

AWARD

The facts and circumstance of this dispute have been stated in the preliminary order dated 17-1-2004. For the sake of brevity and to avoid repetition, the said preliminary order is extracted hereunder :—

Preliminary Order

2-1. The Government of India Vide Order No. L-12012/456/2001-IR (B-I) dated 18-3-2002, referred the following issues for adjudication :

"Whether the action of the management of South Indian Bank Ltd., Thrissur in dismissing the services of Sri. P.J. Antony is justified? If not, what relief the applicant is entitled ?"

2-2. The management dismissed the workman, Sri. P. J. Antony from service on the basis of the findings rendered by the Enquiry Officer in the domestic enquiry conducted into the charges levelled against him. The workman has disputed the validity of the domestic enquiry in his claim statement dated 17-8-2002 and replication dated 10-2-2003. On the other hand, the management has submitted in its written statement dated 19-10-2002 and the additional written statement dated 30-6-2003 that the enquiry held was quite impartial, proper, fair and valid.

2-3. In view of the above contentions urged by the parties, the preliminary point to be considered is whether the domestic enquiry held into the charges against the workman is legal and valid.

2-4. A perusal of Ext. M1 enquiry file reveals that the workman participated in the enquiry throughout with the assistance of his representative Sri. Peter Anto Nellissery who is an office-bearer of the union in which he was a member. He has also corss-examined the management-witness. It is further observed that the workman or his representative had never made any complaint either against the Enquiry Officer or against the procedure adopted by him in conducting the domestic enquiry.

2-5. In the circumstance, I hold that the domestic enquiry held into the charges against the workman is not vitiated by any procedural defect.

2-6. The next point to be considered is whether the findings of the Enquiry Officer are correct. The allegations levelled against the workman as per chargesheet dated 14-2-2000 are as follows :—

"1. That he absented from duty without leave continuously from 20-9-1999 onwards till date.

2. That, acting in disobedience of the lawful and reasonable order of the official superior, the Manager of the Bank's Personal Department, vide letter PER : D : M : 43 : 99-2000 dated 22-12-99, he failed to join duty at the branch.

3. That he unauthorisedly absented from duty without intimation or application for leave of absence, continuously for a period exceeding 30 days.

4. That he committed the aforesaid acts in disregard of the several punishments awarded to him earlier for committing misconduct of similar nature.

5. That the above said acts amount to violation of leave rules of the bank applicable to him, acts prejudicial to the interest of the bank and subversive of its discipline."

2-7. Though the charges against the workman have been classified into five, all these charges had arisen from the main allegation of unauthorised absence from duty without intimation or application for absence, continuously for a period exceeding 30 days. The Enquiry Officer has found that all the above five charges have been proved in full. The point to be considered is whether this finding is correct.

2-8. It is observed from Ext. M1 enquiry file that the workman had submitted leave applications. Of course, the entire period of absence is not covered by these applications. However, since he had submitted leave applications, it cannot be held that he had absented from duty without intimation for a period exceeding 30 days. It is true that the leave applications submitted by the workman are not supported by Medical Certificates and without filling up all the columns in the applications. There is a specific column in the leave applications to indicate whether the medical certificate has been attached. Only in one leave application, which has been received by the management on 18-1-2000, it has been noted in this column that the medical certificate has been attached. Some of the columns regarding date of application, date of commencement of leave, nature of leave, number of days etc. have been left blank. It is, therefore, clear that the absence of the workman during the disputed period was without submitting proper leave applications. However, it cannot be held that his absence was without intimation.

2-9. The workman has not disputed the period of absence. According to him, he absented from duty as he met with an accident and laid up with injuries. It is further submitted by him that the illness of his wife, hospitalisation of his brother-in-law due to an accident, the heart disease of his son and his hospitalisation with suspected jaundice are also reasons for his absence from duty. Though he has claimed that he had produced medical certificates, as already observed hereinabove, there is nothing on record to substantiate this contention. If the above reasons submitted by the workman were genuine, there will not be any difficulty to substantiate the same by producing medical certificates. When the delinquent workman has admitted the period of absence, the burden of proof is on him to substantiate that his absence was for valid reasons. The workman has not discharged this burden in the present case.

2-10. In the aforesaid circumstance, I have no hesitation to hold that the workman had absented from duty during the period mentioned in the chargesheet without valid reasons and without submitting proper leave applications, and to uphold the findings of the Enquiry Officer, except the finding that the absence of the workman was without intimation or application for leave of absence.

2-11. In the result, the preliminary point is found as intigated the above. Post this I.D. to 9-2-2004 for hearing the question of punishment.

3. When the matter came up for hearing on 9-2-2004, the management filed M.P. No. 17/2004 praying to delete the last portion or para 10 of the above preliminary order i.e., "except his finding that the absence of the workman was without intimation or application for leave of absence." According to management, the observation of this court in the preliminary order regarding the findings of the Enquiry Officer that the absence of the workman was without intimation or application for leave is a mistake apparent on the face of records which needs correction. It is submitted by the management that the workman remained absent from 20-9-99 to 15-2-2000 and in between he submitted three leave applications, of which the first application was received in the Branch only on 16-12-99. As per this application, re-requested for leave for the period from 20-9-1999 to 18-12-1999. Therefore, he was absent without leave application continuously for 86 days. In the second leave application dated 3-1-2000, there was no date of commencement of leave, but requested leave till 5-1-2000. In the third application also, the commencement of leave is not mentioned. But the expiry of the leave is shown as 14-1-2000. This application is dated nil and received in the Branch only on 18-1-2000.

4. In fact, the above discrepancies in the leave applications have been pointed out in para 8 of the preliminary order. The fact that the entire period of absence is not covered by the leave applications has been specifically stated in that para. This court had also noticed the fact that the Branch Manager failed to deny the suggestive question put to him in corss-examination in the enquiry that the delinquent workman intimated the absence overphone. Having regard to all these facts and circumstances, this court upheld the findings of Enquiry Officer except the finding that the absence of the workman was without intimation for leave.

5. The first charge against the workman is that he absented from duty without leave continuously from 20-9-99 to 14-2-2000. Even according to the management, the workman had submitted three leave applications during this period. However, the Enquiry Officer found that this charge was also **proved in full.** This finding of the Enquiry Officer is erroneous and hence this court had made the observation as stated in para 10 of the preliminary order. In the circumstance, I do not find any reason to make any correction to the preliminary order as prayed for by the management in M. P. No. 17/2004 and hence the said M. P. is hereby dismissed.

6. The next point to be considered is whether the punishment of dismissal meted out to the workman is proportionate to the gravity of the misconduct proved against him. As already observed in the preliminary order, the workman absented from duty without submitting proper leave applications and failed to satisfy the management that his absence was for valid reasons. Though he had availed of the opportunity to prefer domestic appeal before the Board of Directors, he failed to satisfy the Board also that his absence was for valid reasons. From Ext. M2 file, it is observed that the Board of Directors had considered his past service record and found that the back-file of the workman was tainted with chargesheets issued to him for similar misconducts. He had been chargesheeted on several occasions previously for similar acts of misconduct and eight times he was given punishments. The management has produced in the domestic enquiry 19 memos as MEX 11 issued to him in the past. As per Memo dated 20-11-96, he was awarded the punishment of stoppage of one future increment for a period of six months with cumulative effect. It is seen that in spite of these actions taken against the workman, he had repeated the very same misconduct.

7. As observed by the Supreme Court in **Punjab & Sind Bank V/s Sakattas Singh**—2001 (1) LLJ 174, in the case of unauthorised absence, punishment can be imposed even without holding domestic enquriy. In **Punjab & Sind Bank** case (supra), the Supreme Court upheld the punishment of dismissal meted out to an employee for unauthorised absence. In the present case, I do not find any circumstance to take a contrary view and to interfere with the punishment of dismissal by invoking the provisions of Sec. 11-A of the I.D. Act.

8. In the result, an award is passed upholding the punishment of dismissal meted out to Sri. P. J. Antony and holding that he is not entitled to any relief.

Dated this the 5th day of March, 2004.

B. RANJIT KUMAR, Industrial Tribunal

APPENDIX

Witnesses examined on the side of Management.
Nil.

Witnesses examined on the side of workman.
Nil.

Documents marked on the side of Management.

Ext. M1—Enquiry file.

Ext. M2—File containing correspondence between management and the workman.

Documents marked on the side of workman.
Nil.

नई दिल्ली, 25 मार्च, 2004

का. आ. 969.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक आफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण पटना के पंचाट (संदर्भ संख्या मिस. सं. 2-सी आफ 2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-3-2004 को प्राप्त हुआ था।

[सं. एल-12014/01/2004-आई.आर.(बी-I)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 25th March, 2004

S.O. 969.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.Misc. No. 2C of 2003) of the Industrial Tribunal Patna now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 24-3-2004.

[No. L-12014/01/2004-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER INDUSTRIAL TRIBUNAL, PATNA

Misc. Case No. 2C of 2003

Vinod Kumar Jha, concerned workman through the General Secretary, State Bank of India Employees Union (Bihar State), 215, Ashoka Place, Exhibition Road, Patna. ...Complainant.

VERSUS

1. The Chief General Manager, State Bank of India, Local Head Office, South Gandhi Maidan, Patna.
2. The Assistant General Manager, State Bank of Inida, Darbhanga Branch. ...Opposite Parties.

For the Management : Kumar Kalyan Mishra, Deputy Manager, SBI, Darbhanga

For the Workman : Sri G.K. Verma, General Secretary, SBI Employees Union (Bihar State) Patna.

PRESENT : Priya Saran, Presiding Officer, Industrial Tribunal, Patna.

AWARD

The 16th day of March, 2004

This refers to complaint filed by worker Sri Vinod Kumar Jha through State Bank of India Employees Union (Bihar State) u/s. 33A of the Industrial Disputes Act, 1947 (hereinafter to be referred as the 'Act') against the Chief General Manager, State Bank of India, Patna and another with a prayer to declare that management's action in altering the mode of payment of salary to the concerned workman is a violation of mandatory provision of Section 33 of the Act and as such, they are punishable u/s. 31 of the Act.

2. Briefly stated complainant's case is that till August, 2003 Management paid the wages to concerned workman through his Savings Bank Account but w.e.f. September, 2003 the payment is being made through Banker's Cheque and this is violation of service condition. In view of pendency of a Reference Case No. 24C of 2003 between the parties and alleged violation of service condition stated above, the present complaint has been filed U/s. 33 of the Act.

3. After some argument whether payment of salary through Banker's Cheque instead of State Bank Account of the worker is a change in service condition is the leaned Secretary of union expressed his desire to withdraw the complaint. I am also not convinced at all that the change in mode of payment of salary can be taken as violation. In above view of the matter I am of firm opinion that the present complaint is not maintainable and there has been no violation of any service condition at the hands of the management, This complaint is disposed of in terms aforesaid.

4. Award accordingly.

PRIYA SARAN, Presiding Officer

नई दिल्ली, 31 मार्च, 2004

का. आ. 970.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 1 की उप धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा 1 मई, 2004 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय -4 (44 व 45 धारा के सिवाय जो पहले ही प्रवृत्त हो चुकी है) अध्याय-5 और 6 [धारा-76 की उपधारा (1) और धारा-77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त हो चुकी है] के उपबन्ध आन्ध्र प्रदेश राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :—

"जिला नल्गोंडा के यादगिरी गुट्टा मण्डल में राजस्व ग्राम-पैदाकन्दुकुर"।

[सं. एस-38013/18/2004-एस.एस.-I]

के० सी० जैन, निदेशक

New Delhi, the 31st March, 2004

S. O. 970.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st May, 2004 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapters-V and VI [except Sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Andhra Pradesh, namely :—

"The areas falling within the limits of Revenue village of Pedakandukur in Yadgirigutta Mandal in Nalgonda District of Andhra Pradesh."

[No. S-38013/18/2004-S.S-I]

K.C. JAIN, Director

नई दिल्ली, 31 मार्च, 2004

का. आ. 971.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा-1 की उप धारा-(3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा 1 मई, 2004 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय-4 (44 व 45 धारा के सिवाय जो पहले ही प्रवृत्त हो चुकी है) अध्याय-5 और 6 [धारा-76 की उप धारा (1) और धारा-77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबन्ध आन्ध्र प्रदेश राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :—

"आन्ध्र प्रदेश राज्य के नालगोंडा नगरपालिका राजस्व गांव के अन्तर्गत सभी क्षेत्र और नालगोंडा मण्डल में स्थित चेलीपल्ली, अम्मागुडा, पानगल, अर्जालबावि, मर्रिगुडा, कंचनपल्ली, गुडलपल्ली, अनंतारम, कोतापल्ली, गंडमवारिगुडेम, मामिल्लगूड़ा, जी. के. अन्नारम, एम दुप्पलपल्ली और अन्नरेड्डीगूडा राजस्व गांव और सम्बन्धित इलाके"।

[सं. एस-38013/19/2004-एस.एस.-I]

के०सी० जैन, निदेशक

New Delhi, the 31st March, 2004

S. O. 971.— In exercise of the powers conferred by Sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st May, 2004 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapters-V and VI [except Sub-Section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force

in the following areas in the State of Andhra Pradesh namely :—

"All the areas falling within Municipal Limits of NALGONDA Municipality and Revenue villages of CHERLAPALLY, AMMAGUDA, PANAGAL, ARJALABAVI, MARRIGUDA, KANCHANPALLY, GUNDLAPALLY, ANANTHARAM, KOTHAPALLY, GANDAMVARIGUDEM, MAMILLAGUDA, G. K. ANNARAM, M. DUPPALAPALLY and ANNAREDDYGUDA in NALGONDA Mandal and District."

[No. S-38013/19/2004-S.S.-I]

K.C. JAIN, Director

नई दिल्ली, 31 मार्च, 2004

का. आ. 972.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा-1 की उप धारा-(3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा 1 मई, 2004 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय-4 (44 व 45 धारा के सिवाय जो पहले ही प्रवृत्त हो चुकी है) अध्याय-5 और 6 [धारा-76 की उप धारा (1) और धारा-77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबन्ध आन्ध्र प्रदेश राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :—

"आन्ध्र प्रदेश राज्य के ईस्ट गोदावरी जिले के मन्डपेट मण्डल में स्थित दवारपूडी, केसवरम, 2-मेडपाडू इप्पनापाडु। तापेस्वरम, अन्तमूर, कुम्मलेरू, मंडपेड राजस्व गांव के इलाके और अनपर्ती मण्डल में स्थित अनपर्ती दुप्पलपाडु, कोप्पवरम, महेन्द्रवाडा, पोलमूरू, रामवरम, कुटुकुलूरू, पेदपर्ती, पुलगोर्ती राजस्व गांव के इलाके"।

[सं. एस-38013/20/2004-एस.एस.-I]

के० सी० जैन, निदेशक

New Delhi, the 31st March, 2004

S. O. 972.— In exercise of the powers conferred by Sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st May, 2004 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapters-V and VI [except Sub-Section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following) areas in the State of Andhra Pradesh namely :—

"All the areas falling within the limits of—

(i) The Revenue villages of Dwarpudi, Kesavaram, 2-Medapadu, Ippaninapadu, Tapeswaram, Attamur, Kummaleru and Mandapeta in Mandapeta Mandal.

(ii) The Revenue villages of Anaparthi, Duppalapadu, Koppavaram, Mahendravada, Polamaru, Ramavaram, Kutukuluru, Pedaparthi and Pulagorthi in Anaparthi Mandal in East Godawari District of Andhra Pradesh."

[No. S-38013/20/2004-S.S.-I]

K.C. JAIN, Director

नई दिल्ली, 31 मार्च, 2004

का. आ. 973.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा-1 की उप धारा-(3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा 1 मई, 2004 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय-4 (44 व 45 धारा के सिवाय जो पहले ही प्रवृत्त हो चुकी है) अध्याय-5 और 6 [धारा-76 की उप धारा (1) और धारा-77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबन्ध आन्ध्र प्रदेश राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :—

"आन्ध्र प्रदेश राज्य के जिला-करीमनगर के रामगुन्डेम मन्डल के राजस्व ग्राम-जनगम, मरेडपका, अल्लुर, जल्लीपल्ली और लक्ष्मीपूर गांव (राजस्व गांव एलकलपल्ली के छोटे गांव)"।

[सं. एस-38013/21/2004-एस.एस.-I]

के० सी० जैन, निदेशक

New Delhi, the 31st March, 2004

S. O. 973.— In exercise of the powers conferred by Sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st May, 2004 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapters V and VI [except Sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Andhra Pradesh namely :—

"All the areas falling within limits of Revenue Villages of Jangam, Maredpaka, Allur, Jallipalli and Laxmipoor Village (Hamlets of Elkalapalli Revenue Village) in Ramagundam Mandal in Karimnagar District."

[No. S-38013/21/2004-S.S.-I]

K.C. JAIN, Director

नई दिल्ली, 31 मार्च, 2004

का. आ. 974.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 1 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा 1 मई, 2004 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय 4 (44 व 45 धारा के सिवाय जो पहले ही प्रवृत्त हो चुकी है) अध्याय 5 और 6 [धारा 76 की उप-धारा (1) और धारा 77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबंध आन्ध्र प्रदेश राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :—

"आन्ध्र प्रदेश राज्य के सूर्यापेट नगरपालिका के सीमा सूर्यापेट मण्डल में स्थित बी. माधवरम, पिल्ललमरी, के. टी. अन्नारम, ईनामपेट, कसाराबाद बी.डी. गुडेम, रायनगुडेम, दुराजपल्ली, दासयिगुडेम राजस्व गांवों और चिवेमुला मण्डल के चिवेमुला राजस्व गांव और सम्बधित इलाके"।

[सं. एस-38013/22/2004-एस.एस.-I]

के. सी. जैन, निदेशक

New Delhi, the 31st March, 2004

S.O. 974.—In exercise of the powers conferred by Sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st May, 2004 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter V and VI [except Sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Andhra Pradesh namely :—

"All the areas falling within the limits of Suryapet Municipality and Revenue Villages of B. Madhavaram, Pillalamarri, K.T. Annaram, Inampet, Kasarabad, Beedigudem, Rayangudem, Durajpally, Dasaigudem in Suryapet Mandal and Revenue Village of Chivemula in Chivemula Mandal of Nalgonda District in Andhra Pradesh".

[No. S-38013/22/2004-S.S.-I]

K. C. JAIN, Director

नई दिल्ली, 31 मार्च, 2004

का. आ. 975.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 1 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा 1 मई, 2004 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय 4 (44 व 45 धारा के सिवाय जो पहले ही प्रवृत्त हो चुकी है) अध्याय 5 और 6 [धारा 76 की उप-धारा (1) और धारा 77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबंध आन्ध्र प्रदेश राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :—

1. जिला गुन्टूर के मंडल यादलापाडु के अन्तर्गत आने वाले राजस्व ग्राम.—एडलापाडु, कारूचोला, संदीपुडी, मैदावोलू, दिन्थेनापाडु, जलाडी, तिम्मापुरम तथा वनकायलापाडु।
2. नांदेडला मंडल के अन्तर्गत राजस्व ग्राम.—गनपवरम तथा अप्पापुरम।
3. चिलकलूरिपेट की नगरपालिका सीमा।
4. चिलकलूरिपेट मंडल के अन्तर्गत आने वाले राजस्व ग्राम.—कावुरू, कोंद्रपाडु, मनुकोंडावारी पालेम, पासुमर्रू, पुरुशोतमापटनम, बोप्पुडी, पोतावरम, वेलुरू, कुक्कापल्लीवानिपलेम तथा गोट्टिपाडु"।

[सं. एस-38013/23/2004-एस.एस.-I]

के. सी. जैन, निदेशक

New Delhi, the 31st March, 2004

S.O. 975.—In exercise of the powers conferred by Sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st May, 2004 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter V and VI [except Sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Andhra Pradesh namely :—

"All the areas falling within the limits of Revenue Villages of :

(i) Edlapadu, Karuchola, Sandipudi, Mydavolu, Dinthenapadu, Jaladi, Thimmapuram and Vankayalapadu in Yadlapadu Mandal;

(ii) Ganapavaram and Appapuram in Nandedla Mandal;

(iii) Chilakaaluripeta Municipal limits;

(iv) Kovuru Kondrupadu, Manukondavaripalem, Pasumarru, Purushothammpatnam, Boppudi, Pothavaram, Veluru, Kukkapallivanipalem, Gottipadu in Chilakalurpet Mandal in Guntur District of Andhra Pradesh".

[No. S-38013/23/2004-S.S.-I]

K. C. JAIN, Director

नई दिल्ली, 31 मार्च, 2004

का. आ. 976.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 1 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का

प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा 1 मई, 2004 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय 4 (44 व 45 धारा के सिवाय जो पहले ही प्रवृत्त हो चुकी है) अध्याय 5 और 6 [धारा 76 की उप-धारा (1) और धारा 77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबंध आन्ध्र प्रदेश राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :—

"जिला तथा मंडल अनन्तपुर के अधीन आने वाले राजस्व ग्राम—रचनपल्ली, कोडिमि, इतिकालापल्ले, कुनुगुन्टा तथा बुक्कारायसमुद्रम मंडल में बुक्कारायसमुद्रम, गोविन्दपल्ले, रेड्डिपल्ली तथा रपथाडुमंडल में परसन्नयापल्ले सोथरम, परथाडु"।

[सं. एस-38013/24/2004-एस.एस.-I]

के. सी. जैन, निदेशक

New Delhi, the 31st March, 2004

S.O. 976.—In exercise of the powers conferred by Sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st May, 2004 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter V and VI [except Sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Andhra Pradesh namely :—

"All the areas falling within the Revenue Village of Rachanapalli, Kodimi, Itikalapalle, Kunugunta in Anantapur Mandal & Revenue Villages of Bukkarayasamudram Mandal & the Revenue Villages of Prasannayapalle, Sothram & Rapthadu in Rapthadu Mandal of Anantapur District".

[No. S-38013/24/2004-S.S.-I]

K. C. JAIN, Director

नई दिल्ली, 31 मार्च, 2004

का. आ. 977.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 1 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा 1 मई, 2004 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय 4 (44 व 45 धारा के सिवाय जो पहले ही प्रवृत्त हो चुकी है) अध्याय 5 और 6 [धारा 76 की उप-धारा (1) और धारा 77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबंध आन्ध्र प्रदेश राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :—

"आन्ध्र प्रदेश राज्य के वेस्ट गोदावरी जिले के कोवुर मंडल में स्थित वेमुलूरू राजस्व गांव के संबंधित इलाके"।

[सं. एस.-38013/26/2004-एस.एस.-I]

के. सी. जैन, निदेशक

New Delhi, the 31st March, 2004

S.O. 977.—In exercise of the powers conferred by Sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st May, 2004 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter V and VI [except Sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Andhra Pradesh namely :—

"All the areas falling within the Revenue Villages of Vèmuluru, in Kovur Mandal, West Godavari District, Andhra Pradesh".

[No. S-38013/26/2004-S.S.-I]

K. C. JAIN, Director

नई दिल्ली, 31 मार्च, 2004

का. आ. 978.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 1 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा 1 मई, 2004 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय 4 (44 व 45 धारा के सिवाय जो पहले ही प्रवृत्त हो चुकी है) अध्याय 5 और 6 [धारा-76 की उप-धारा (1) और धारा 77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबंध आन्ध्र प्रदेश राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :—

"आन्ध्र प्रदेश राज्य के महबूबनगर जिले के फरूकनगर (शाद नगर) मण्डल में स्थित शाद नगर, फदरुकनगर, इसकल, चट्टनपल्ली, बुच्चिगुडा, सोलीपुर, कम्मदानम, चिलकमरी, रैकल, अन्नारम, किशननगर, एलिकट्टा, नागुलापल्ली, हाजीपल्ली, बूर्गुला, अलीसाबगुडा और चिन्टगूडेम, राजस्व गांव के संबंधित इलाकों"।

[सं. एस.-38013/27/2004-एस.एस.-I]

के.सी. जैन, निदेशक

New Delhi, the 31st March, 2004

S.O. 978.—In exercise of the powers conferred by Sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st May, 2004 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter V and VI [except Sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Andhra Pradesh namely :—

"All the areas falling within the Revenue Villages of Shadnagar, Farrooknagar, Dooskal,

Chattanpally, Buchiguda, Solipoor, Kammadanam, Chilakamarry, Rakal, Annaram, Kishannagar, Elikatta, Nagulapally, Hajipally, Burgula, Alisabguda and Chintagudem in Farrooknagar (Shadnagar) Mandal of Mahaboob Nagar District of Andhra Pradesh."

[No. S-38013/27/2004-S.S.-I]

K.C. JAIN, Director

नई दिल्ली, 31 मार्च, 2004

का. आ. 979.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 1 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा 1 मई, 2004 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय-4 (44 व 45 धारा के सिवाय जो पहले ही प्रवृत्त हो चुकी है) अध्याय 5 और 6 [धारा-76 की उपधारा (1) और धारा 77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबन्ध आन्ध्र प्रदेश राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :—

"पूर्वी जिला क्षेत्र के जग्गम्पेट मण्डल के राजस्व ग्राम-काट्टवेल्लपल्लि, सीता नगरम, तिम्मापुरम, जेड. रागमपेटा, ताल्लुरू मल्लेपल्लि, उप्पलपाडु, वोर्रमपालेम, गुर्रमपालेम, गोल्लागुन्टा, सीतमपेट, रामवरम तथा जै. कोत्तूरू के अन्तर्गत सभी क्षेत्र"।

[सं. एस.-38013/28/2004-एस.एस.-I]

के.सी. जैन, निदेशक

New Delhi, the 31st March, 2004

S.O. 979.—In exercise of the powers conferred by Sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st May, 2004 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter V and VI [except Sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Andhra Pradesh namely :—

"All the areas falling within the revenue villages of Kataravellapalli, Seetanagaram, Timmapuram, Z. Ragampeta, Talluru Mallepalli, Uppalapadu, Borrampalem, Gurrampalem, Gollagunta, Seethampet, Ramavaram and J. Kothuru in Jagampet Mandal in East Godawari District of Andhra Pradesh."

[No. S-38013/28/2004-S.S.-I]

K.C. JAIN, Director

नई दिल्ली, 31 मार्च, 2004

का. आ. 980.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 1 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा 1 मई, 2004 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय-4 (44 व 45 धारा के सिवाय जो पहले ही प्रवृत्त हो चुकी है) अध्याय 5 और 6 [धारा-76 की उपधारा (1) और धारा 77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबन्ध आन्ध्र प्रदेश राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :—

"आन्ध्र प्रदेश राज्य के कडपा जिले के कडपा मंडल में स्थित चिन्न चौक, चेम्मुमियापेट, अक्कायपल्ले, बुक्कायपल्ले, रामराजुपल्ले, पुट्लमपल्ले, गूडूर और पालेमपल्ले राजस्व गाँवों के इलाके, चिन्तकोम्पदिन्ने मण्डल में स्थित कृष्णपुरम, बूटुकूरू, विस्वनाधपुरम और मामिल्लपल्ले राजस्व गाँवों के इलाके, वल्लूर मण्डल में स्थित तोल्लगंगनपल्ले राजस्व गाँवों के इलाके।"

[सं. एस.-38013/29/2004-एस.एस.-I]

के.सी. जैन, निदेशक

New Delhi, the 31st March, 2004

S.O. 980.—In exercise of the powers conferred by Sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st May, 2004 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter V and VI [except Sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Andhra Pradesh namely :—

"All the areas falling within the revenue villages of Chinna Chowk, Chemmumiapet, Akkayapalle, Vukkayapalle, Ramarajupalle, Putlampalle, Gudur and Palempalle in Cuddapah Mandal, Revenue villages of Krishnapuram, Vutukuru, Viswanadhapuram and Mamillapalle in Chintakommadinne Mandal and the Revenue village of Tollaganganapalle in Vallore Mandal of Cuddapah District in Andhra Pradesh."

[No. S-38013/29/2004-S.S.-I]

K.C. JAIN, Director

नई दिल्ली, 31 मार्च, 2004

का. आ. 981.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 1 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा 1 मई, 2004 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय-4 (44 व 45 धारा के सिवाय जो पहले ही प्रवृत्त हो चुकी है) अध्याय 5 और 6 [धारा-76 की उपधारा (1) और धारा 77, 78, 79 और 81

के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबन्ध आन्ध्र प्रदेश राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :—

"एल.बी. नगर नगरपालिका के राजस्व गाँव के सीमा के अंतर्गत आने वाले सभी क्षेत्र (पहले अधिसूचित किए गए सभी क्षेत्रों को छोड़कर) आंध्र प्रदेश के रंगारेड्डी जिला, हयतनगर मंडल में पेढा अंबरपेट तथा कुंट्लूर एवं सरूरनगर मंडल के जिल्लेलगूडा।"

[सं. एस.-38013/30/2004-एस.एस.-I]

के.सी. जैन, निदेशक

New Delhi, the 31st March, 2004

S.O. 981.—In exercise of the powers conferred by Sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st May, 2004 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter V and VI [except Sub-section (1) of Sections 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Andhra Pradesh namely :—

"The areas falling within the limits of Revenue villages of L.B. Nagar Municipality excluding those areas which are already notified earlier, Jillelaguda in Saroor Nagar Mandal, Peda Amberpet and Kuntlur in Hayathanagar Mandal of Ranga Reddy District in Andhra Pradesh."

[No. S-38013/30/2004-S.S.-I]

K.C. JAIN, Director

नई दिल्ली, 31 मार्च, 2004

का. आ. 982.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 1 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा 1 मई, 2004 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय-4 (44 व 45 धारा के सिवाय जो पहले ही प्रवृत्त हो चुकी है) अध्याय 5 और 6 [धारा-76 की उपधारा (1) और धारा 77, 78, 79 और 81 के के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :—

"जिला तथा तालुक नगपत्तीनम के अन्तर्गत आने वाले राजस्व ग्राम-उतमचोलापुरम, कुतालम, गोपुराजापुरम, नरीमानम, पननगुडी तथा कीलवेलुर तालुक में वैनकीदनकल।"

[सं. एस.-38013/31/2004-एस.एस.-I]

के.सी. जैन, निदेशक

New Delhi, the 31st March, 2004

S.O. 982.—In exercise of the powers conferred by Sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st May, 2004 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter V and VI [except Sub-section (1) of Sections 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Tamil Nadu, namely :—

"Areas comprising the Revenue Villages of Uthamacholapuram, Kuthalam, Gopurajapuram, Narimanam, Panangudi in Nagapattinam Taluk and Venkendangal in Keelvelur Taluk of Nagapattinam District."

[No. S-38013/31/2004-S.S.-I]

K.C. JAIN, Director

नई दिल्ली, 31 मार्च, 2004

का. आ. 983.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 1 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा 1 मई, 2004 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय-4 (44 व 45 धारा के सिवाय जो पहले ही प्रवृत्त हो चुकी है) अध्याय 5 और 6 [धारा 76 की उपधारा (1) और धारा 77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबन्ध उत्तर प्रदेश राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :—

"जिला-मुजफ्फरनगर के तहसील जानसठ एवं परगना खतौली के अन्तर्गत राजस्व ग्राम-वेगराजपुर, खानपुर, मुनव्वर कलां/खुर्द, फहीमपुर कलां/खुर्द, हुसैनपुर बोपाडप एवं परगना जौली जानसठ तथा भोकर हेड़ी के राजस्व ग्राम-भंडूर एवं कसौली"।

[सं. एस.-38013/32/2004-एस.एस.-I]

के.सी. जैन, निदेशक

New Delhi, the 31st March, 2004

S.O. 983.—In exercise of the powers conferred by Sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st May, 2004 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter V and VI [except Sub-section (1) of Sections 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Uttar Pradesh namely :—

"Areas comprising the Revenue villages of Vegrajpur, Khanpur, Munnawar Kalan/Khurd,

Fahimpur Kalan/Khurd, Husainpur Bopad up under Tehsil and Pargana Jansath and Khatauli and also in the revenue villages—Bhandoor and Kasauli of Pargana Jolly Jansath and Bhoker Hedi of same Tehsil and District Muzaffar Nagar."

[No. S-38013/32/2004-S.S.-I]

K. C. JAIN, Director

नई दिल्ली, 31 मार्च, 2004

का. आ. 984.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 1 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा 1 मई, 2004 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय-4 (44 व 45 धारा के सिवाय जो पहले ही प्रवृत्त हो चुकी है) अध्याय 5 और 6 [धारा-76 की उप-धारा (1) और धारा 77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबन्ध पंजाब राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :—

"जिला-लुधियाना की तहसील रायकोट के अन्तर्गत राजस्व ग्राम-जोधन, हदबस्त संख्या-302"।

[सं. एस.-38013/33/2004-एस.एस.-I]

के.सी. जैन, निदेशक

New Delhi, the 31st March, 2004

S.O. 984.—In exercise of the powers conferred by Sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st May, 2004 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter V and VI [except Sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Punjab namely :—

"Revenue Village-Jodhan, Head Bast No. 302 in the Tehsil Raikot, District of Ludhiana."

[No. S-38013/33/2004-S.S.-I]

K. C. JAIN, Director

नई दिल्ली, 31 मार्च, 2004

का. आ. 985.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 1 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा 1 मई, 2004 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय-4 (44 व 45 धारा के सिवाय जो पहले ही प्रवृत्त हो चुकी है) अध्याय 5 और 6 [धारा-76 की उप-धारा (1) और धारा 77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबन्ध उत्तर प्रदेश राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :—

"जिला-कानपुर देहात की परगना एवं तहसील अकबरपुर के अन्तर्गत आने वाले राजस्व ग्राम-खलीलपुर, जैनपुर, स्वरूपपुर, प्रसिद्धपुर भांट, रायपुर एवं उमरन।"

[सं. एस.-38013/34/2004-एस.एस.-I]

के.सी. जैन, निदेशक

New Delhi, the 31st March, 2004

S.O. 985.—In exercise of the powers conferred by Sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st May, 2004 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter V and VI [except Sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Uttar Pradesh namely :—

"Area comprising the revenue villages—Khalilpur, Jainpur, Swarooppur, Prasidhpur Bhant, Raipur and Umaran in Pargana and Tehsil—Akbarpur of District Kanpur Dehat."

[No. S-38013/34/2004-S.S.-I]

K. C. JAIN, Director

नई दिल्ली, 31 मार्च, 2004

का. आ. 986.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 1 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा 1 मई, 2004 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय-4 (44 व 45 धारा के सिवाय जो पहले ही प्रवृत्त हो चुकी है) अध्याय 5 और 6 [धारा-76 की उप-धारा (1) और धारा 77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबन्ध उत्तर प्रदेश राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :—

"जिला-बरेली की तहसील एवं परगना आँवला में स्थित राजस्व ग्राम-नौगवां, प्राश, इसलामाबाद, सेन्दा, सेन्दी, नूरपुर, नंगरिया सप्तम एवं आंवला शहर के अन्तर्गत आने वाले क्षेत्र।"

[सं. एस.-38013/35/2004-एस.एस.-I]

के. सी. जैन, निदेशक

New Delhi, the 31st March, 2004

S.O. 986.—In exercise of the powers conferred by Sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st May, 2004 as the date on which the provisions of Chapter IV [except Sections 44 and 45

which have already been brought into force) and Chapter V and VI (except Sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force) of the said Act shall come into force in the following areas in the State of Uttar Pradesh namely :—

"Areas comprising in the Revenue villages of Naugaon, Prash, Islamabad, Senda, Sendi, Noorpur, Nagaria Saptam and Anwala Shahar in Pargana and Tehsil Anwala of District Bareilly."

[No. S-38013/35/2004-S.S.-I]

K. C. JAIN, Director

नई दिल्ली, 31 मार्च, 2004

का. आ. 987.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 1 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा 1 मई, 2004 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय-4 (44 व 45 धारा के सिवाय जो पहले ही प्रवृत्त हो चुकी है) अध्याय 5 और 6 [धारा-76 की उप-धारा (1) और धारा 77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबन्ध उत्तर प्रदेश राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :—

"जिला-राजस्व तहसील एवं राजस्व परगना आगरा के अन्तर्गत राज्स्व ग्राम-मोहम्मदपुर।"

[सं. एस.-38013/36/2004-एस.एस.-I]

के. सी. जैन, निदेशक

New Delhi, the 31st March, 2004

S.O. 987.—In exercise of the powers conferred by Sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st May, 2004 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter V and VI (except Sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force) of the said Act shall come into force in the following areas in the State of Uttar Pradesh namely :—

"Revenue Village-Mohammadpur in the Revenue Pargana, Tehsil and District Agra."

[No. S-38013/36/2004-S.S.-I]

K. C. JAIN, Director

नई दिल्ली, 31 मार्च, 2004

का. आ. 988.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 1 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा 1 मई, 2004 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय-4 (44 व 45 धारा के सिवाय जो पहले ही प्रवृत्त हो चुकी है) अध्याय 5 और 6 [धारा-76 की उप-धारा (1) और धारा 77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबन्ध आन्ध्र प्रदेश राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :—

"आन्ध्र प्रदेश राज्य के रंगा रेड्डी जिले के हयतनगर मण्डल में स्थित कोहेडा, उमरखान डेरा, अनाजपुर, गांडिचेरू, सुर्मायीगुडा, लश्कर गूडा, ईनामगूडा, पेददअंबरपेट, तोर्रूर, तुर्क्यंजाल, इजापुर तथा कम्मगूडेम राजस्व गांवों के सम्बन्धित इलाके।"

[सं. एस.-38013/37/2004-एस.एस.-I]

के. सी. जैन, निदेशक

New Delhi, the 31st March, 2004

S.O. 988.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government here by appoints the 1st May, 2004 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter V and VI [except sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Andhra Pradesh namely :—

"All the areas falling within the Revenue Villages of Koheda, Omarkhan Daira, Anazpur, Gandicheru, Surmaiguda, Lashkarguda, Inamguda, Pedda Amberpet, Torrur, Turkyanjal, Injapur and Kammagudem in Hayat Nagar Mandal in Ranga Reddy District in Andhra Pradesh."

[No. S-38013/37/2004-S.S.-I]

K. C. JAIN, Director

नई दिल्ली, 31 मार्च, 2004

का. आ. 989.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 1 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा 1 मई, 2004 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय-4, अध्याय 5 और 6 [धारा-76 की उप-धारा (1) और धारा 77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबन्ध आन्ध्र प्रदेश राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :—

"आन्ध्र प्रदेश राज्य के करीमनगर जिले के करीमनगर नगरपालिका के अंतर्गत सभी क्षेत्र, करीमनगर मण्डल में स्थित राजस्व गांवों चिन्तकुन्टा, मलकापुर, लक्ष्मीपुर, रेकुट्टी, कोत्तपल्ली, सीतरामपुर,

आरेडपल्ली, वल्लमपनाड, बोम्मकल, दर्शेड, इरूकुल्ला, कोक्केरकुंटा, वत्रामि, वेलचेला, तिम्मापुर मण्डल में स्थित राजस्व गांव अलुगुनूर और मानकोन्डूर मण्डल में स्थित राजस्व गांव मानकोन्डूर के संबंधित इलाके।"

[सं. एस.-38013/38/2004-एस.एस.-I]

के.सी. जैन, निदेशक

New Delhi, the 31st March, 2004

S.O. 989.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st May, 2004 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter V and VI [except Sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Andhra Pradesh namely :—

"All the areas falling within the Municipal limits of Karimnagar and the Revenue villages of Chintakunta, Malkapur, Lakshmipur, Rekurtty, Kothapalli, Seethrampur, Aredpally, Vallampanad, Bommakal, Durshed, Irukulla, Kokkerakunta, Vannaram, Velchela in Karimnagar Mandal, Alugunoor in Timmapur Mandal and Manakondur in Manakondur Mandal of Karimnagar District in Andhra Pradesh."

[No. S-38013/38/2004-S.S.-I]

K. C. JAIN, Director

नई दिल्ली, 31 मार्च, 2004

का. आ. 990.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 1 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा 1 मई, 2004 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय-4 (44 व 45 धारा के सिवाय जो पहले ही प्रवृत्त हो चुकी है) अध्याय 5 और 6 [धारा-76 की उप-धारा (1) और धारा 77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबन्ध आन्ध्र प्रदेश राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :—

"जिला नालगोंडा के मिर्यालगुडा नगरपालिका के अन्तर्गत सभी क्षेत्र तथा मिर्यालगुडा मण्डल में स्थित राजस्व ग्राम-गुडूर, किस्तापुर, कोन्तगुंडम, अलगडपा, रूद्रवरम, यादगारपल्ली, काल्वपल्ली, वट्टपल्ली, चिंतपल्ली, वेंकटाद्रीपालेम, जापूर वरप्पगुडा, तुंगपहाड, चिल्लापुरम, नंदिपहाड के अन्तर्गत सभी क्षेत्र"।

[सं. एस.-38013/39/2004-एस.एस.-I]

के. सी. जैन, निदेशक

New Delhi, the 31st March, 2004

S.O. 990.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st May, 2004 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter V and VI [except Sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Andhra Pradesh namely :—

"All the areas falling within the limits of Miryalaguda Municipality and the Revenue Villages of Gudoor, Kistapur, Kothagudem, Alagadapa, Rudravaram, Yadgarpally, Kalwapally, Vootlapally, Chintapally, Venkatadripalem, Zapurvarappaguda, Tungapahad, Chillapuram, Nandipahad in Miryalaguda Mandal of Nalgonda District of Andhra Pradesh."

[No. S-38013/39/2004-S.S.-I]

K. C. JAIN, Director

नई दिल्ली, 8 अप्रैल, 2004

का. आ. 991.—केन्द्रीय सरकार संतुष्ट हो जाने पर कि लोकहित में ऐसा करना अपेक्षित था, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खण्ड (ढ़) के उप-खण्ड (vi) के उपबंधों के अनुसरण में भारत सरकार के श्रम मंत्रालय की अधिसूचना संख्या का. आ. 3100 दिनांक 16-10-2003 द्वारा दिल्ली दुग्ध योजना के अन्तर्गत दुग्ध आपूर्ति में लगे उद्योग जो कि औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की प्रथम अनुसूची की प्रविष्टि 6 में शामिल है, को उक्त अधिनियम के प्रयोजनों के लिए दिनांक 24 अक्टूबर, 2003 से 6 मास की कालावधि के लिए लोक उपयोगी सेवा घोषित किया था;

और केन्द्रीय सरकार की राय है कि लोकहित में उक्त कालावधि के छः मास की और कालावधि के लिए बढ़ाया जाना अपेक्षित है;

अतः अब, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खण्ड (ढ़) के उप-खण्ड (vi) के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार उक्त उद्योग को उक्त अधिनियम के प्रयोजनों के लिए दिनांक 24-4-2004 से छः मास की कालावधि के लिए लोक उपयोगी सेवा घोषित करती है।

[सं. एस.-11017/7/1997-आई. आर. (पी. एल.)]

जे. पी. पति, संयुक्त सचिव

New Delhi, the 8th April, 2004

S.O. 991.—Whereas the Central Government having been satisfied that the public interest so required that in pursuance of the provisions of sub-clause (vi) of the clause (n) of Section 2 of the Industrial Disputes Act, 1947 (14 of 1947), declared by the Notification of the Government of India in the Ministry of Labour S.O. No. 3100 dated 16-10-2003 the industry for the supply of Milk under the "Delhi Milk Scheme" which is covered by item 6 of the First Schedule to the Industrial Disputes Act, 1947 (14 of 1947) to be a public utility service for the purpose of the said Act, for a period of six months from the 24th October, 2003.

And whereas, the Central Government is of opinion that public interest requires the extension of the said period by a further period of six months.

Now, therefore, in exercise of the powers conferred by the proviso to sub-clause (vi) of clause (n) of Section 2 of the Industrial Disputes Act, 1947, the Central Government hereby declares the said industry to be a public utility service for the purposes of the said Act for a period of six months from 24th April, 2004.

[No. S-11017/7/1997-IR(PL)]

J. P. PATI, Jt. Secy.

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